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The Diplomatic Techniques of Daniel Webster as Revealed in His Negotiation of the Treaty of Washington

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THE DIPLOMATIC TECHNIQUES OF DANIEL WEBSTER
AS REVEALED IN HIS NEGOTIATION OF THE
TREATY OF WASHINGTON

BY

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CHAPTER I

WEBSTER'S POLITICAL DILEMMA

The history of the period 1841-1842 unfolds a tale unique in its virulent political problems. To play the leading role in this trying period was the great diplomat, Daniel Webster. Eminent as a lawyer, famous as an expounder of constitutional law, renowned as an orator, honored as a partisan senator and a national statesman, Mr. Webster entered a new phase of political life.

For the first time in the history of the United States the Whig party captured the presidency. But more was at stake than the election of a one-term Whig president. The inheritance of the new administration included the momentous problems of the protective tariff, the distribution of the proceeds of the public lands, the internal improvements, the regulation of the currency through a national bank, the reduction of the public expenses and the settlement of the controversial and irritating problems between England and the United States. All demanded immediate solution. On these measures nine-tenths of the Whig party was unanimous.¹ Therefore, it was imperative that the

¹ John Robert Irelan, History of the Life, Administration and Times of William Henry Harrison, Fairbanks and Palmer, Chicago, 1888, 434

president-elect Harrison surround himself with a competent cabinet. The pivotal issue in selecting the cabinet was the bank question. Henry Clay had yielded no ground in relation to the bank; he was preparing to reintroduce the subject in the next congress.² Daniel Webster, on the other hand, had declared that he considered the question of the bank charter as settled. "Public opinion has decided against it...For myself I shall take no part in any attempt to renew the charter of the bank."³ Mr. Harrison had expressed himself as willing to continue the "experiment" to carry on the government finances without the aid of a bank. When he carried the anti-bank states of North Carolina, Georgia, Mississippi, Louisiana and Tennessee, he did not consider this a mandate to set up a new bank.⁴

Since the political chiefs of the Whig party were Henry Clay and Daniel Webster, to them went the offer of the Treasury and State departments. The first offer of both portfolios was made to Henry Clay, who, disgruntled because he had not received the Whig presidential nomination, refused the offer. He would not accept favors from the man who occupied the office he

2 Freeman Cleaves, Old Tippecanoe, Charles Scribner's Sons, N. Y., 1930, 329.

3 Claude M. Fuess, Daniel Webster, Little, Brown and Co., Boston, 1930, II, 27

4 Ibid., 329

regarded as rightfully his. Moreover, as the Whig leader in congress, he could wield more influence and could drive through the party's program of legislation. To Mr. Webster the President-elect now offered a choice between the Treasury and State department when he wrote:

...I had determined if successful, to solicit your able assistance in conducting the administration, and now I ask you to accept the State of Treasury department. I have myself no preference of either for you, but it may perhaps be more difficult to fill the latter than the former if you should decline it. It was first designed for you in the supposition that you had given more attention to the subject of finances than Mr. Clay...⁵

In the event that he should feel obliged to decline the cabinet position, Mr. Webster was asked to make suggestions regarding other men available for appointment. "Give me your advice freely and fully upon that and every other subject, whether you occupy a place in the cabinet or not, and it will be at all times thankfully received."⁶ Long before the election Mr. Webster was urged by influential men in various parts of the country to accept a cabinet post if it should be offered him. Although he should have preferred an appointment as minister to Great Britain, he decided to accept the portfolio of state.⁷

5 Fletcher Webster, ed., The Private Correspondence of Daniel Webster, Boston, 1857, II, 91, subsequently referred to as Webster, Correspondence.

6 Ibid.

7 Frederic Austin Ogg, Ph. D., Daniel Webster, George N. Jacobs & Co., Philadelphia, 1914, 294

In acknowledging his invitation to become a cabinet member and in voicing his opinion on the relation between the cabinet and the president, Mr. Webster wrote:

I am willing to undertake the duties of the office, prepared to give to their faithful discharge my best ability and all my efforts. You are kind enough to suggest that my acquaintance with the subjects of currency and finance might render me useful as head of the Treasury. On that subject my view has been this: I think all important questions of revenue, finance, and currency, properly belonging to the Executive, should be cabinet questions; that every member of the cabinet should give them his best consideration, and especially that the results of these deliberations should receive the sanction of the President. This seems necessary to union and efficiency of action. If to these counsels I may be supposed able to contribute anything useful, I shall withhold myself from no degree of labor and no just responsibility. For the daily details of the Treasury, the matter of account, and the supervision of subordinate officers employed in the collection and disbursement of the public moneys, I do not think myself to be particularly well qualified.....⁸

Willingness was expressed to accept the Treasury portfolio, however, in the event that special difficulty should be encountered in making provision for it. On December 27, 1840, Mr. Webster was informed by Mr. Harrison that, as far as could be observed, his call to the State Department had been given universal satisfaction. Officially, on March 5, 1841, Mr. Webster was nominated as Secretary of State. His nomination received the immediate confirmation of the senate. Commenting on Mr. Webster's

⁸ Webster, Correspondence, II, 93-94

appointment, Nicholas Biddle, whose opinion was entitled to respect, believed that his ancient stand-by would be the power behind the throne. "The coming administration will be in fact, your administration," he wrote to Mr. Webster.⁹ In making this prophetic statement, Mr. Biddle believed that unless Mr. Webster expected the administration to be his, he would not have entered it.

In Faneuil Hall, Boston, Mr. Webster gave to the public his explanation for accepting the post of the Secretary of State, when he said:

It so happened, gentlemen, that my preference was for the other place, - for that which I have now the honor to fill. I felt all the responsibilities but I must say that with whatever attention I had considered the general question of finance, I felt more competent and willing to undertake the duties of an office which did not involve the daily drudgery of the Treasury.

I was not disappointed, gentlemen, in the exigency which then existed in our foreign relations. I was not unaware of all the difficulties which hung over us; for although the whole danger was not at the moment developed, the cause of it was known and it seemed as if an outbreak was sure to be at hand....¹⁰

It is obvious from his speech and from the account of his visit to England in 1839 that he believed he could achieve success in the conduct of our British relations where others had failed.

⁹ Samuel H. Adams, The Godlike Daniel, Sears Publishing Co. Inc., N. Y., 1930, 241

¹⁰ Samuel N. Dickinson, printer, Political Pamphlets, 1830 - 1850, Boston, 1842, 9

The new president now announced his cabinet as Daniel Webster, Secretary of State; Thoman Ewing, Secretary of the Treasury; John Bell, Secretary of War; George E. Badger, Secretary of the Navy; Francis Granger, Postmaster-General; and John J. Crittenden, Attorney-General.¹¹ The new cabinet was notably strong and the prospects of the new administration were exceedingly favorable. Now the first Whig administration was in power. Probably no beginning had been more auspicious. But in a brief month the glowing political sky was overcast with threatening clouds, which the most vigorous faith could not dispel. The death of President Harrison within a month after his inauguration shattered all the hopes of the infant administration. His death was looked upon as a calamity. To Mr. Clay and Mr. Webster it was a thunderbolt. An importance was attached to the event which belonged to it more than to the man. Nothing of the kind had ever happened before. A feature of the constitution upon which little stress had been placed was now, for the first time, to be tried. The Vice-president was to become in fact the President! For such an unexpected turn the Whigs had not provided. This circumstance increased the fears and uncertainty of the party. It stimulated the general sentiments of sorrow over the sad, brief career of the new president, during whose administration

11 Irelan, 469

they had hoped to achieve much. To the Democrats, President Harrison's death was accepted as a "sudden and startling visitation of Providence."¹²

On April 6, in Brown's Hotel, Mr. Tyler took the oath of office from William Cranch, Chief Justice of the Circuit Court of the District of Columbia.¹³ Justice Cranch certified that although Mr. Tyler deemed himself qualified to perform the duties and exercise the powers and office of president, on the death of President Harrison, without any other oath than that which he had taken as vice-president, yet as doubts might arise, and for greater caution, he had taken and subscribed the present oath.¹⁴ Immediately Mr. Tyler assumed the presidential responsibilities. He interpreted the Constitution as giving to him by succession full claim to all the rights and privileges of the presidency. The precedent set by him has been followed in every subsequent case in which a vice-president succeeded to the Chief Magistracy.

Mr. Tyler's interpretation of this clause in the constitution was not accepted by all the leaders, either of the

¹² Anonymous, "Moral of Veto," Democratic Review, J. & H. G. Langley, N. Y., 1841, IX, 296

¹³ National Intelligencer, Washington, April 7, 1841

¹⁴ Allan Nevins, ed., Diary of John Quincy Adams, 1794-1845, Longmans, Green and Co., N. Y. 1928, 521, subsequently referred to as Nevins, Adams' Diary.

Whigs or the Democrats. Prominent among the Whigs who regarded him as only the acting president was John Quincy Adams, who wrote in his diary:

I paid a visit this morning to Mr. Tyler who styles himself President of the United States and not Vice President, which would be the correct style. It is a construction in direct violation both of the grammar and context of the Constitution which confers upon the Vice President, not the office but the powers and duties of said office....¹⁵

Some of the newspapers took the same view as Mr. Adams, but, the National Intelligencer, the leading paper of the Whigs, argued in defense of Mr. Tyler's position. Vehemently it denounced those who referred to him as acting President or merely acting ad interim as President. It justified his position when it stated:

...the office proper of President became vacant and Mr. Tyler performed the duties of that office in his quality of Vice President. Whereas, he is, to all intents and purposes, by the appointment of the Constitution, and by election, President of the United States; invested with the office proper of President, with as plenary right and authority as his predecessor, General Harrison; ...By terms of the Constitution, the office of President "devolves on the Vice President." By his original election he was provisionally elected to the office of President upon the

¹⁵ Ibid., 522

happening of any one of the conditions provided in the Constitution.¹⁶

President Tyler, like John Adams before him and Andrew Johnson after him inherited a ready-made cabinet. At Brown's Hotel, the temporary residence of Mr. Tyler, the cabinet met with him for their first regular meeting. After the President had opened the meeting, Mr. Webster, a trifle uneasily inquired of him as to his relations with the cabinet. He began:

Mr. President, I suppose you intend to carry on the ideas and customs of your predecessor, and that this administration inaugurated by President Harrison will continue the same line of policy under which it has begun.¹⁷

Mr. Tyler, somewhat perplexed by the emphasis placed on the word custom and fearing what was coming next, nodded slightly.

¹⁶ National Intelligencer, April 15, 1841; also Niles National Register, Baltimore, LX, 98. From 1814-1837 this work was known as Niles Weekly Register. From 1837-1849 it was known as Niles National Register. Subsequently it will be referred to as Niles Register. On this article John Adams scornfully remarked: "There is a dogmatical article in the National Intelligencer asserting this false construction; which is not worth contesting; but which to a strict constructionist would warrant more than a doubt whether the Vice President has the right to occupy the President's house, or to claim his salary without an Act of Congress." Nevins, Adams' Diary, 522

¹⁷ Hugh Russell Fraser, Democracy in the Making, The Bobbs-Merrill Co., N. Y., 1938, 159

'It was the custom,' continued Mr. Webster, 'in the cabinet of the deceased President, that the President should preside over us. Our custom and proceeding was that all measures, what ever, however relating to the administration were brought before the cabinet, and their settlement was decided by a majority - each member and the President having one vote.....' 18

Obviously surprised at Mr. Webster's definite explanation and yet firm in his own opinion, President Tyler responded:

'I beg your pardon, gentlemen. I am sure I am very glad to have in my cabinet such able statesmen as you have proved yourselves to be, and I shall be pleased to avail myself of your counsel and advice. I can never consent to being dictated to as to what I shall or shall not do. I, as president, will be responsible for my administration. I hope to have your co-operation in carrying out its measures: so long as you see fit to do this, I shall be glad to have you with me - when you think otherwise your resignation will be accepted.' 19

Startled and amazed, the cabinet members had no cause to question their relationship with the new incumbent. Definitely Mr. Tyler considered the cabinet only an advisory board with no powers of legislation. Chagrined, they realized that their influence on Mr. Tyler would be very limited.

In the meantime Mr. Clay was preparing to play his trump, the bank bill. He had really never accepted the conditions

18 Frank G. Carpenter, "A Talk with the President's Son." Lippincott's Monthly Magazine, Philadelphia, March, 1888, XLI, 417-418; also Ben Perley Poore, Perley's Reminiscences of Sixty Years in the National Metropolis, Hubbard Brothers, Philadelphia, 1886, II, 257 - 258

19 Ibid.

which arose from Mr. Harrison's death. He preferred to assume that Mr. Tyler belonged to the Whig party, with all the obligations of Mr. Harrison resting upon him. So promptly Mr. Clay put through both houses a bill for re-establishing the Bank of the United States. As promptly Mr. Tyler vetoed it. Revised and modified, the bill again passed both houses. But, again, on September 9, at twelve o'clock, Mr. Tyler sent his veto to the senate. Crowded galleries heard the message in which he announced that he could not approve the Bank of the United States under whatever name it came.²⁰ Instantly Mr. Clay's plans crashed. He had a majority, but not a two-thirds majority. He could put through legislation, but he could not override a veto! When the veto was announced, the fury of the Whigs was unrestrained. They had won the election by a popular majority of more than a 150,000 and by an electoral vote of 234 to 60. Now they were about to lose the fruits of the victory.²¹ Immediately Mr. Clay and the Whig senators and representatives read President Tyler out of the party and denounced him for betraying Whig principles.

²⁰ James D. Richardson, A Compilation of the Messages and Papers of the Presidents, 1789 - 1897, Published by Authority of Congress, 1900, IV, 68 - 72

²¹ Gerald W. Johnson, America's Silver Age, Harper & Bros. N. Y., 1939, 245

The Whigs throughout the country joined in a chorus of repudiation until the world for a time believed that John Tyler was a lineal descendant of Judas Iscariot, deceased.²²

Although this view of Mr. Tyler was accepted by historians of Whig sympathies for many years, later writers on this period stress the fact that Mr. Tyler never pretended to be a Whig or anything other than an anti-Jackson Democrat. He was not nominated as a Whig but as an Anti-Spoils Democrat, in coalition with Whigs and other dissatisfied Democrats. The only principle of Whiggery which Mr. Tyler espoused when he accepted the coalition nomination was that of breaking down the spoils system of the Democrats, inaugurated by Jackson and in full force under Van Buren.²³ Therefore, he could hardly be called a traitor to principles he never espoused. On the other hand, many of the Democrats rejoiced at his predicament because they looked upon him as a deserter. Consequently, Mr. Tyler stood almost alone in the midst of an imperious senate, an excited house of representatives, an antagonist cabinet and an insolent press. The crisis of Mr. Tyler's repudiation by the Whig party came

²² John S. Wise, Recollections of Thirteen Presidents, Doubleday, Page & Co., N. Y., 1906, 16

²³ Ibid., 17

when all the cabinet members, except Mr. Webster, influenced by Clay, announced their intentions of resigning their posts.²⁴

Late in the afternoon of September 10, Messrs. Ewing, Crittenden, and Badger informed Mr. Webster at his office that they had decided to resign their posts in the cabinet by the next morning at eleven o'clock, Saturday, September 11. In vain did they appeal to Mr. Webster to join them. He frankly informed them that they were acting rashly. For the course he would pursue, he would need time.²⁵ Unmoved by Mr. Webster's exhortation, the other cabinet members resigned on September 11, 1841.²⁶ John Tyler Jr., who was private secretary to his father, noted that the first resignation arrived at 12:30 P. M. and the last at 5:30 P. M. All the members, except one, sent letters with their resignations. Mr. Granger, the political ally of Mr. Webster, sent no letter. He had no serious grievance against the president, but resigned rather than separate from his friends in congress and the cabinet.²⁷ The timing of these resignations would indicate that this was a move on the part of Clay's friends to compel the resignation of the president. They believed that

24 Washington Globe, Sept., 15, 1841

25 George T. Curtis, Life of Daniel Webster, D, Appleton & Co., N. Y., 1870, II, 81

26 Niles Register, September 11, 1841, LXI, 33

27 Oliver Perry Chitwood, John Tyler: Champion of the Old South, D. Appleton-Century Co., N. Y., 1939, 273

Mr. Tyler would be unable to form a new cabinet before the adjournment of congress on September 13, only three days away. In that event they hoped that Mr. Tyler would be forced to resign and then Samuel L. Southard of New Jersey president pro-tem of the senate, a Whig, would be chief executive under the existing law.²⁸ If Mr. Tyler's enemies were actuated by the motives attributed to them, they were thwarted in their evil designs by the president's prompt action. A new cabinet was chosen at once and the names of the appointees were sent to the senate before it adjourned. They were promptly approved.²⁹

Meanwhile, Mr. Webster was worried about his position and perturbed about the course he should pursue. Did the collision between the leading Whigs and the President demand his resignation, too? Must he succumb to severe party pressure and allow future problems with England to remain unsettled? Therefore, since his decision was fraught with such important consequences, he felt he should have the advice of his closest political friends in the solution of this great dilemma. The next day after the veto message was sent to congress, Mr. Webster invited the Whig senators and representatives to his home for a conference. That evening, September 10, among those who responded were

28 Fraser, 220; also Chitwood, 276

29 National Intelligencer, Sept. 18, 1841

Senators Adams and Cushing and Representatives Baker, Borden, Burnett, Hudson, Saltonstall and Winthrop.³⁰

Frankly Mr. Webster told the delegation he could see no sufficient cause for resigning his office. Therefore, he wanted the opinion of the delegation as to whether he should resign. He assured the delegation that "as to the office itself it was a matter of most perfect indifference to him whether he retained it or resigned it."³¹ Although Mr. Webster feigned indifference for his cabinet position, secretly there burned within him a yearning desire to retain it. There is sufficient evidence to prove that he was intent on solving the problems between England and the United States. Consequently, he concluded his remarks to the delegation by reminding them of the difficulties with England.

Unanimously the delegation decided that for the sake of the crisis with England especially, Mr. Webster should stay in the cabinet. National considerations came before those of the Whig party. Yet in concurring with this view, Mr. Adams mournfully noted in his diary his conviction "that the requiem for the Whig party was at hand."³²

³⁰ Curtis, II, 81

³¹ Charles Francis Adams, Memoirs of John Quincy Adams, J. B. Lippincott & Co., Philadelphia, 1876, X, 13

³² Nevins, Adams' Diary, Sept. 11, 1841, 530

When Mr. Webster informed President Tyler of his intention of remaining in the cabinet, President Tyler, rising from his seat and extending his hand to Mr. Webster warmly rejoined, "Give me your hand on that, and now I will say to you that Henry Clay is a doomed man."³³

Being disgusted with the dubious reasons given by the other cabinet members for resigning, Mr. Webster determined to make his own position clear. To the editors of the Niles National Register, he wrote a detailed letter in which he disclosed his reasons for remaining in the cabinet. He emphasized the fact that "he has seen no sufficient reasons for the dissolution of the late cabinet." He expressed great confidence in the president that "he will cooperate with the legislature in overcoming all difficulties in the attainment of these objects." Union of the whole Whig party, Whig president, the Whig congress, and the Whig people, he held as his great hope. Finally he concluded by stating that if he were forced to resign he would give the president "a reasonable notice, affording him time to select the hands to which he should confide the delicate and important affairs now pending in the department."³⁴

³³ Lyon G. Tyler, The Letters and Times of the Tylers, Whittet and Shepperson, Richmond, Va., 1888, II, 122

³⁴ September 18, 1841, 34; also Curtis II, 81

Likewise in a speech to his political Whig friends in Boston on October 1, Mr. Webster again defended his position in relation to Mr. Tyler's cabinet.³⁵ Vehemently he expounded on the grave question of long standing between Great Britain and the United States. The long disputed Maine boundary line, the affair of the Caroline, the McLeod case, the right of search of ships engaged in the slave trade--all of these sources of ill feeling between the two nations demanded immediate settlement, peaceably if possible, forcibly if necessary. Convinced that these delicate problems demanded the official guardianship of an Easterner, born and bred in the East, the assemblage applauded Mr. Webster for his spirit of courage and patriotism. In recognition of their confidence in him and fully impressed with the hazards which would possibly jeopardize his own reputation, Mr. Webster pledged his friends that he would not resign his office until the controversies with England had been amicably settled.

³⁵ Allan Nevins, The Diary of Philip Hone, 1828 - 1851, Dodd, Mead & Co., N. Y., 1936, subsequently referred to as Nevins, Hone Diary.

CHAPTER II

ANGLO-AMERICAN TENSIONS

On March 5, 1841, when Mr. Webster accepted the burdens of the state department, the problems to which he had pledged himself cast low and threatening clouds upon the international horizon. The controversy over the northern boundary continuing through six administrations from Washington to Tyler remained unsolved. The incident of the Caroline pressed for immediate attention. The arrest of a British subject threatened the severance of the diplomatic relations between the English-speaking nations. Diplomacy had reached an impasse.

At the bottom of the dissensions were the embers of 1776 and 1812 which had been fanned and kept alive. When, in November, 1837, news of the Lower Canada Rebellion trickled into the United States, fuel for the flames was supplied in abundance. The Canadian cause was likened to the cause of the American Revolution. Enthusiastically the American frontiersmen applauded the rebellious Canadians. American democracy was young and was just beginning to feel its strength. The Americans of that day regarded with pride their republican institutions. To their minds political liberty could be enjoyed only under republican institutions. The border Americans, fired with this

Sir Francis Bond Head for Mackenzie and others, the first proclamation offered the sum of £500 for the Lieutenant Governor of Upper Canada.³ In concluding their grievances against the Canadian government, Mackenzie complained:

...they have spurned our petitions, involved us in their wars, excited feelings of national and sectional animosity in counties, townships, and neighborhoods, and ruled us, as Ireland has been ruled, to the advantage of persons in other lands, and to the prostration of our energies as a people..⁴

Obviously these types of grievances appealed to the border American. The proposal to distribute the land to "the worthy men of all nations" was an enticing invitation which induced him to enlist in the Canadian cause. Anticipating the independence of Lower Canada and Upper Canada and the Maritime Provinces, these enlisted Americans hoped to secure the settlement of the troublesome northeastern boundary and the free navigation of the St. Lawrence.⁵ To expel Great Britain from North America was their watchword. They expressed their devotion to the Canadian cause in two ways--through public meetings and through the organization of filibustering expeditions. Both of these showed clearly how strong were the pent-up feel-

3 Ibid.

4 Ibid., II, Appendix, 363

5 National Intelligencer, "Editorial Correspondence," Dec. 5, 1837

ings against Great Britain.⁶ Their meetings resulted in recruiting and procuring financial assistance. Besides giving assistance, many openly enlisted in the rebel forces on United States soil while mobs emptied several American arsenals and turned over their contents to the insurrectionists. The actual number of enlisted Americans is uncertain. While these enlisted Americans represented the inarticulate masses, the press expressed the opinions of more conservative Americans. Although the papers ran accounts of the border ferment, they urged neutrality. Characteristic comments are found in the National Intelligencer as:

...New York City is also in a good deal of excitement. The people throng the bulletins to get the news. Volunteers are talked of--public meetings, and all that. The fact is, all along the Northern States, particularly on the borders, the excitement is electric. The Government will readily see it has another Texas affair on hand, but John Bull is not made of such material as the Mexicans...⁷

Persistently the press insisted that "the Canadians must fight their own battles," and "we shall not depart from our Government compromised by any act or measure which may sustain or aid this family."⁸ In the same manner the New York Evening

6 A. B. Corey, The Crisis of 1830-'42 in Canadian-American Relations, Yale University Press, New Haven, 1941, 27.

7 National Intelligencer, "Editor's Correspondence," Dec. 6, 1837

8 Ibid., December 7, 1837

Star stressed the importance of our keeping out of the trouble. "Let them, if they see fit, endeavor to be their own masters. That is their look-out, but do not let us of this country sympathize in their struggles on the ground of harsh treatment."⁹ Likewise Attorney-General Rogers of Erie County complained in writing to President Van Buren that "our whole frontier is in commotion and I fear it will be difficult to restrain our citizens from avenging by a resort to arms this flagrant invasion of our territory. Everything that can be done will be by the public authorities to prevent so injudicious a movement. The respective sheriffs of Erie and Niagara have taken the responsibility of calling out the militia to guard the frontier and prevent any further depredations."¹⁰

Despite the warnings of the press and government authority, the recruiting continued in the border states. In Buffalo, New York, a public meeting was held in behalf of the Canadians. Handbills, calling for volunteers, were posted. They read: "Patriot Volunteers will rendezvous this evening at nine o'clock, in front of the Theatre, prepared to take up their line of march."¹¹ Another meeting was planned at which Mackenzie

⁹ Quoted in National Intelligencer, Dec. 5, 1837

¹⁰ Richardson, III, 466

¹¹ Corey, 34

addressed the group.¹² Soon the rebellion met a speedy collapse. The defeated Mackenzie found refuge in Buffalo, where, from his headquarters at the Eagle Tavern, he hoisted the insurgent flag which consisted of twin stars, representing the two Canadas, and the great seal. The seal showed a new moon breaking through the darkness, with the words, Liberty-Equality.¹³ With a band of about two hundred men raised in the United States under the command of Van Rensselaer, Mackenzie and his followers seized Navy Island in the Niagara River on the Canadian side of the boundary and re-established themselves.¹⁴

A small American ship, the Caroline, owned by a resident of Buffalo, was used to transport supplies and reinforcements to the insurgent stronghold, Navy Island. Colonel McNab ordered a surprise night attack on her while she was in Canadian waters. At 11 p.m. on December 29, 1837, Captain Drew and a volunteer party executed the command.¹⁵ Failing to find the boat at Navy Island, the raiding party sighted her moored at Schlosser,

12 National Intelligencer, December 6, 1837

13 Lindsey, II, 132

14 Wilson P. Shortridge, "The Canadian Frontier during the Rebellion of 1837-1838," The Canadian Historical Review, University of Toronto Press, 1926, VII, 15

15 G.T.D. (anonymous), "The Burning of the Caroline," Canadian Monthly and National Review, Adams, Stevenson & Co., Toronto, 1873, 291, subsequently referred to as Canadian Monthly.

New York. Unhesitatingly they captured her, dispersed the crew, and sent the boat in flames adrift to destruction. There is a difference of opinion among writers as to where the Caroline sank. Americans capitalized on the horrors of the blazing Caroline bouncing to destruction over the Falls, whereas the Canadians insist that the boat sank one or two miles above the Falls.¹⁶ A Canadian soldier, who held that he took part in the capture, stated:

The Caroline on fire, with flames continually increasing, drifted down the main channel and into Horse Shoe Rapids. On reaching the rapids she was shaken and broken almost immediately. A large portion of her stuck on a ledge of rock and remained there for years, the remainder broke up and was dashed over the Falls. The fire went out almost as soon as she got into the rapids...¹⁷

Of greater importance was the fact that in the fracas to seize the ship, an American citizen, Amos Durfee, was killed. The whole affair created intense excitement in the United States. It was clearly an invasion of American territory, although the ship was operating in violation of United States neutrality. President Van Buren demanded redress from the British government, but London explained this invasion of our territory as an excusable and necessary measure of self-defense in suppressing the

¹⁶ Alastair Watt, "The Case of Alexander McLeod," Canadian Historical Review, University of Toronto Press, 1931, XII, 146

¹⁷ Canadian Monthly, 292

rebellion in Canada.

The border Americans clamored for the avenging of the national honor. The tension became so acute that President Van Buren issued a proclamation urging all Americans to observe the neutrality laws. In very definite terms he stated:

I hereby warn all those who have engaged in these criminal enterprises, if persisted in, that whatever may be the condition to which they may be reduced, they must not expect the interference of this Government in any form on their behalf, but will be left, reproached by every virtuous fellow-citizen, to be dealt with according to the policy and justice of that Government, whose dominions they have, in defiance of the known wishes of their own Government and without the shadow of justification or excuse, nefariously invaded...¹⁸

In similar tone President Van Buren not only summoned all those who had enlisted under the Canadian banner to return home, but he reminded them of the penalties incurred for violating the Neutrality Act of 1818.¹⁹ He sent General Winfield Scott to the border and ordered the states of New York and Vermont to call out their militia. Although angered at the Caroline incident and the Durfee murder, the citizens in the states removed from the border were more cautious and less reluctant to condemn the British invasion of American soil. Some expressed themselves to the effect that the Americans were largely responsible for the existing situation.

¹⁸ Richardson, III, 482

¹⁹ Ibid.

The Caroline affair did not arouse much interest in England. The British government maintained that the destruction of the Caroline was "the public act of persons obeying the constituted authority of Her Majesty's Province."²⁰ Since Great Britain believed that she had acted rightly in self-defense, she paid little attention to the demands of the United States for reparation and apology. This incident was still a diplomatic question three years later when Mr. Webster assumed the duties of the State Department.

The formal demand of the British Minister, Mr. Fox, for the release of Alexander McLeod began Mr. Webster's perplexing foreign relation problems. In the late fall of 1840, Alexander McLeod, a deputy sheriff of the Niagara district in the Province of Upper Canada, appeared in New York and boasted openly that he had been one of the group that destroyed the Caroline and that he personally killed Durfee.²¹ Twice before he had been arrested and released because of the lack of sufficient evidence. But on November 12, 1840, he was arrested a third time at Lewiston, New York, and confined in a jail at Lockport, New York. Indicted for murder and arson, McLeod appealed to

²⁰ Congressional Globe, 26th Congress, 2 Session, IX, 173

²¹ Charles Z. Lincoln, ed., State of New York--Messages from the Governors, 1823-1842, J. B. Lyon Co., Albany, 1909 III, 933

England for his release. On December 12, 1840, Mr. Fox requested of President Van Buren the release of the British subject on the ground that the destruction of the Caroline was a public act of persons in her Majesty's service, obeying the orders of their superior authorities. Therefore, the act, according to the usages of nations, was the subject of discussion between the two national governments.²²

To this demand the Secretary of State, Forsyth, replied that the President had no power under the Constitution and the laws of the Union to interpose between McLeod and the constituted authorities of the State of New York. Furthermore, he informed Mr. Fox that "the President is not aware of any principle of international law, or indeed of reason or justice, which entitles such offenders to impunity before the legal tribunals, when coming voluntarily within their independent and undoubted jurisdiction, because they acted in obedience to their superior authorities or because their acts have become the subject of diplomatic discussion between the two Governments..²³

Neither satisfied nor appeased, on March 12, 1841, Mr. Fox addressed another formal note reiterating his demand. This time it was addressed to Mr. Webster. In very definite terms

²² Congressional Globe, 26 Congress, 2 Session, IX, 173

²³ Ibid.

Mr. Fox stated:

...and the undersigned is now instructed to demand from the government of the United States, formally in the name of the British government, the immediate release of Mr. Alexander McLeod.

The grounds upon which the British government makes this demand upon the government of the United States are these: that the transaction on account of which Mr. McLeod has been arrested, and is to be put on trial was a transaction of public character, planned and executed by persons duly empowered by her Majesty's colonial authorities to take any steps and to do any acts which might be necessary for the defense of her Majesty's territories and for the protection of her Majesty's subjects: and that, consequently, those subjects of her Majesty who engaged in that transaction were performing an act of public duty for which they can not be made personally answerable to the laws and tribunals of any foreign country...²⁴

Indignation in England reached its peak. The spirited Foreign Secretary Palmerston threatened war if a hair of the martyr McLeod's head were touched.²⁵ With great anxiety the Governor General of Canada waited the outcome of the case. He believed that the incarceration of McLeod was prolonged indefinitely so that the American government could exchange notes which would ultimately lead to the liberating of the prisoner. In the hope that peace would prevail, the Governor was determined to keep the people on the frontier quiet.²⁶ However,

²⁴ Harper & Bros., publishers, The Diplomatic and Official Papers of Daniel Webster While Secretary of State, N. Y., 1848, 121, subsequently referred to as, Diplomatic and Official Papers of Daniel Webster

²⁵ Paul Knaplund, ed., Letters from Lord Sydenham, Governor General of Canada, 1839-1841, to Lord John Russell, George Allen & Unwin Ltd., London, 1931, 129

²⁶ Ibid.

the attitude in England was not as pacific as that of the Governor General. The press defiantly denounced the United States. Representative of many of the English papers was the London Times which printed a scathing article on the injustice of the state of New York for "bringing an innocent man to trial on a charge of murder."²⁷ It denounced Congress, which was in session during this time, for not having "remedied the evil." It was their contention that "had the Government of the United States been willing to meet the case fairly--to have done justice to Mr. McLeod and at the same time to Great Britain, they could have passed an act of Legislation for his release."²⁸ Since the United States government had not responded in this respect, it was accused of acting "in direct opposition to all international law and to the usage of civilization to hold Mr. McLeod or any individual personally responsible for an act committed under the orders of his own Government."²⁹ To the British their innocent victim, ignominiously detained in prison, was submitted to a trial by a foreign court. Outraged they looked to the Queen who "will direct the energies and resources of the empire over which her Majesty rules, in vindication of a national wrong, which if suffered with impunity, would leave our

27 London Times, August 31, 1841, 3

28 Ibid.

29 Ibid.

numerous and widely-dispersed colonists at the mercy of every lawless and unprincipled aggressor, and thus endanger the safety, peace, welfare and honour of Her Majesty's possessions."...³⁰

In persistently demanding from the United States government the release of McLeod, the British government refused to accept the fact that the state of New York had sole jurisdiction over the case and that the federal government was powerless. In his letter of April 24, 1841, to Mr. Fox, Mr. Webster emphasized this fact as follows:

...from the consideration that her Majesty's government must be fully aware that in the United States, as in England, persons confined under judicial process can be released from that confinement only by judicial process. In neither country, as the undersigned supposes, can the arm of the executive power interfere, directly or forcibly, to release or deliver the prisoner. His discharge must be sought in a manner conformable to the principles of law, and the proceedings of the courts of judicature...But the undersigned does not suppose that if such a case were to arise in England, the power of the executive government could be exerted in any more direct manner...³¹

As the spirit of antagonism toward the United States arose in England, a similar political battle was waged in congress. For the transaction, as Mr. Fox termed it, occasioned, not unnaturally, a strong feeling of resentment in this country. Armed irruptions into a neutral territory are never kindly taken by the invaded party. A nation is tenderly jealous of the

³⁰ Ibid.

³¹ Diplomatic and Official Papers of Daniel Webster, 124

sanctity of its soil.³² On December 21, 1840, Millard Fillmore of New York submitted in the House of Representatives a resolution requesting the President to transmit to that body all the correspondence with Great Britain concerning the Caroline affair and the McLeod case.³³ Another resolution, on December 31, requiring the printing of the correspondence, resulted in a long debate in which all the grievances against Great Britain were aired. State rights, war and peace, the status of treaties with Great Britain,--all received attention.³⁴ A few days later, in a moderate debate, it was decided to refer the whole matter to the Committee on Foreign Relations. The majority of the congressmen seemed to desire a continuance of peace with Great Britain, although many were still indignant over the haughtiness of Mr. Fox's letters.

On February 13, 1841, Francis W. Pickens of South Carolina, chairman of the Committee on Foreign Relations, introduced the report.³⁵ It gave the facts of the case, stated the principles involved and then proceeded to a violent attack upon Great Britain. Vehemently it denounced Great Britain for her attitude when it stated:

32 Rufus Choate, "Relations with England," North American Review, James Munroe & Co., Boston, 1841, LIII, 413

33 Corey, 132

34 Ibid.

35 Congressional Globe, 26th Congress, 2 Session, IX, 170

There is no doctrine more consecrated in English history, than that every human being who touches the soil of Great Britain is immediately covered by British law. Suppose one of her vessels were cut from the banks of the Thames and burnt by Frenchmen, and British citizens were assassinated at night, and the French Ministers were to avow that they acted under the orders of his government and that the vessel was 'piratical' and the citizens murdered were outlaws-- then there is not an Englishman whose heart would not beat high to avenge the wrong and vindicate the rights of his country...³⁶

In similar vein the report continued. It ended with the hope for a peaceful and honorable adjustment of the cases. A heated debate took place immediately. Millard Fillmore and John Quincy Adams attacked the report on the ground that it was too bellicose. Mr. Pickens replied that it was a plain and fearless statement of fact and that it was not intended to ruffle feelings. Its real purpose was to acquaint the people of the United States with the problems they must face, the chief of which was that of national defense. The more conservative congressmen maintained that it was unwise to stir up feeling against Great Britain until the United States was sufficiently protected on its frontier to withstand attacks.

The McLeod case now supplanted every other dispute in its importance. The Secretary of War, John Bell, opened communications with Governor Seward in regard to providing the proper defenses for the harbor of New York and for putting the forts

³⁶ Ibid., 170

and batteries of Staten Island in an effective condition.³⁷ Confronted with an electrifying problem of criminal law and fully aware of the fact that the federal government had no power in the case, yet overcome with anxiety as to the outcome, Mr. Webster decided to intervene in the cause of national honor. In concurrence with President Tyler, Mr. Webster directed his correspondence to Governor Seward of New York. Being a staunch states' rights champion, Mr. Seward resented the interference. In a letter of February 27, 1841, he plainly informed Mr. Webster that:

A just regard for the honor of this state, as well as a due consideration of the importance of the case to the prisoner, and the possible influence of the result of the proceeding upon the relations existing between this country and Great Britain has seemed to me that the accused should have a fair and impartial trial; that if he participated in the incendiary and murderous transaction. . . he should suffer the penalty which our laws prescribe; and that on the other hand, if he be in truth innocent, the justice of our country ought to manifest itself in his acquittal, notwithstanding the public indignation which the crime laid to his charge so justly called forth.....³⁸

In May, Governor Seward followed up this position by assuring the Assembly "that under no circumstance will any arrangement or proceeding be entered into, or permitted, with the consent of this department, the effect of which might be to

³⁷ Frederick W. Seward, Autobiography of William H. Seward, D. Appleton & Co., N. Y., 1877, 527

³⁸ George E. Baker, ed., The Works of William H. Seward, Redfield, N. Y., 1853, II, 547

compromit, in the least degree, the rights or the honor of this State.³⁹ Further, Mr. Seward maintained that "neither the laws of the United States nor of this state, would permit the federal government to comply with the demands of her Britannic Majesty's Minister for the release of the prisoner, and the president is certainly very right in supposing that such an interposition on his part. . .could not constitutionally be acquiesced in by the authorities of this state."⁴⁰

It had been generally accepted by this time that Great Britain had assumed all the responsibility for the conduct of Mr. McLeod. Therefore, the proper course to pursue, according to the principles of international law, was to secure the entering of a nolle prosequi, and commit the matter to a forum of national negotiation.⁴¹ The question was no longer the concern of only New York but of the entire nation. Stubbornly Governor Seward refused to enter a nolle prosequi.⁴² Consequently, Mr. Webster sent Attorney-General Crittenden to Lockport to attend the trial which was scheduled for May. Due to a technicality, the trial was postponed until June. It was a great

39 Lincoln, 933

40 Baker, II, 549

41 Tyler, II, 207

42 Curtis, II, 66, Note 1, contains the letter of Governor Seward to Mr. Webster, March 22, 1841. The Governor states his opinion of the nolle prosequi.

disappointment to Mr. Webster that the Attorney-General did not at least confer with McLeod's counsel.⁴³ Finally in June it was decided to refer the case on a writ of habeas corpus to the Supreme Court of the state.⁴⁴ At this hearing appeared the United States district-attorney, Mr. Spencer, as counsel for McLeod.⁴⁵ The Supreme Court upheld the jurisdiction of the state court to try McLeod for murder and remanded the case for trial by the lower court. McLeod had a choice of carrying his case directly to the Supreme Court of the United States or of standing trial before a local jury. He chose the latter in order to avoid spending another winter in jail. The venue of the trial was changed to Utica. At this trial on October 12, 1841, the counsel for the defendant proved an alibi.⁴⁶ The

43 C. H. Van Tyne, *The Letters of Daniel Webster*, McClure, Phillips & Co., N. Y., 1902, 233

44 Tyler, 212

45 Governor Seward wrote President Tyler a scathing letter because of this counsel. President Tyler took the position that Mr. Spencer appeared in the court as an individual and not as a representative of the United States. See Tyler, II 208-209

46 Tyler, II, 214 A critical analysis on the position taken by the New York Supreme Court in the case of Alexander McLeod is made by Judge Tallmadge in Review of the Opinion of Judge Cowen of the State of New York in the Case of Alexander McLeod. N. T. Eldridge, N. Y., 1841. The correspondence between Governor Seward and the authorities of the United States accompanies this article.

defense maintained that McLeod had been five or six miles distant at the time of the raid and had not even heard of the affair until ten o'clock the next morning. It took the jury only twenty minutes to return the verdict of not guilty. The braggart McLeod was acquitted and history was spared the humiliating absurdity of two great nations going to war over something that did not happen.

As a result of this involved case which nearly severed our diplomatic relations with Great Britain, President Tyler in his December message to congress recommended the passage of a law which removed from the state to the federal courts all cases involving questions with foreign governments. This bill, framed by Mr. Webster and entitled "An Act to provide further remedial Justice in the Courts of the United States" was passed by congress on August 29, 1842.⁴⁷ This act gives authority to the judges of the United States courts to take any prisoner by habeas corpus, from the State authorities. The bill also provides a direct appeal to the Supreme Court of the United States if the decision of the judge in the first instance is supposed to be erroneous. Many of the most eminent jurists in the country passed it with full concurrence. The legal profession has given it almost unanimous approbation. Through this bill

47 Diplomatic and Official Papers of Daniel Webster,

the federal government is armed with every effectual means of fulfilling its obligation to foreign nations.⁴⁸ Consequently, there is no possibility for a single state to commit the federal government and the whole country to a war.

Undoubtedly one of the most fortuitous circumstances, relatively infrequent particularly at a critical time such as this, was the change in the British government. The faltering Melbourne and the truculent Palmerston were succeeded by the more energetic Peel and the conciliatory Aberdeen. Under these circumstances Edward Everett, who replaced Andrew Stevenson as minister to the court of St. James, entertained great hopes for the peaceful solution of the existing dissensions between England and the United States.

48 G. T. Curtis, "Mr. Webster as a Diplomatist," North American Review, Charles C. Little & James Brown, Boston, 1849, CXLII, 34, subsequently referred to as Curtis, "Mr. Webster as a Diplomatist."

CHAPTER III

THE NEGOTIATION OF THE TREATY

With the change in administration, there was evidence of a definite change in attitude auspicious of better results. The war cry had been smothered. Every overture made by England was indicative of serious and sincere attempts to bring about a lasting conciliation. This recent conciliatory spirit revealed itself in a letter of Sir Robert Peel shortly after he had gone into office. He addressed this letter to Lord Aberdeen.

Whitehall, Oct. 17, 1841

Considering the state of our relations with the United States and the possibility that some immediate and decisive demonstration on our part may be necessary, it appears that we ought without delay to take such measures as shall enable us to make it with effect.

Such measures need not partake of the character of meance, or of any desire for war. But if it be conceded that war may be inevitable; that the decisions upon war or peace be beyond our control; that such events as those that are occurring on the frontiers of Canada may precipitate a decision on the spot--surely we ought to take measures which, without diminishing the hopes of peace may be suitable to the alternative of war.¹

A week later Sir Robert Peel in another communication to Lord Aberdeen voiced his concern about the visitation of ships

¹ C. S. Parker, ed., Sir Robert Peel: From His Private Papers, John Murray, London, 1899, III, 387-388

and the slave trade. With a certain degree of apprehension he realized that if they abandoned the right of search they would likewise abandon the hope of arresting the progress of the slave trade. Fully cognizant of the fact that the exercise of the right rested with the commanding officer who was liable to abuse it, Sir Robert Peel believed that the country could soon be involved in war. In that event the question of slavery would be forgotten and another more serious question would arise--which party had the public law on its side?² Therefore, he advised Lord Aberdeen to determine immediately the actual orders of Her Majesty's ships concerning the exercise of the right of search. He intimated that "the right" ought to be curtailed in the hope of avoiding future complaint from the United States when he stated:

If I were you, I would place upon record such a communication to the Admiralty. It may tend to prevent abuse and at any rate can be referred to as evidence of an unprompted desire on the part of the British government to narrow as far as possible the grounds of American complaint.³

By December there was every reason to believe that England was actually sincere in her desire for peace. On December 26, 1841, Lord Aberdeen addressed a note to Mr. Everett, inviting him to an interview on the following day. At this interview he

2 Ibid.

3 Ibid.

informed Mr. Everett that he was making plans to better the relations between the two countries. He admitted that in offering to send a special envoy to Washington, England was making more than an overture because this minister would be "furnished with full powers to settle every question in controversy."⁴ Lord Aberdeen revealed his great concern in the seriousness of appointing the right person for this mission. He assured Mr. Everett that he had chosen a person who would be particularly acceptable to the United States as well as eminently qualified for the trust. Finally he informed Mr. Everett that Lord Ashburton had been named and that he had consented to the mission.

Mr. Everett considered this step on the part of the British government bold as well as wise. He believed that England not only met the difficulty in the face but expressed a desire to bring matters to a practical result. He held that it was bold "because it was the last expedient for an amicable adjustment, and because its failure must necessarily lead to serious and immediate consequences."⁵

The choice of Lord Ashburton as minister particularly pleased Mr. Everett for he considered Lord Ashburton above the motives which influence politicians of ordinary stamp. He real-

4 Edward Everett, Biographical Memoir of Daniel Webster, Little, Brown & Co., Boston, 1903, 118

5 Ibid.

ized that he possessed a weight of character at home which made him independent of the vulgar resorts of popularity.⁶ It was generally believed that Lord Ashburton's sole motive in accepting the mission at his advanced age (sixty-seven) was to be found in his strong desire to see the relations between the two greatest commercial nations of the world placed on a permanent basis that would cement the friendship and increase the prosperity of both.⁷ Certainly there was no man in England who united in an equal degree the confidence of his own government and country. The Duke of Cambridge stated in Parliament that he believed the noble Lord deserved the highest credit for undertaking so difficult a negotiation.⁸

The appointment of Lord Ashburton was enthusiastically received in the United States. Lord Aberdeen had made an extremely happy choice for Lord Ashburton was not only well known but was greatly admired as a Briton who had every desire to cultivate cordial relations in the United States. Many Americans considered him "a thorough Englishman, not bred in the practice of sacrificing truth and justice to diplomatic arts" but rather a man whose sincerity and manliness of character reflected his

6 Ibid.

7 Curtis, "Letter of Joshua Bates," London, Jan. 3, 1842, II, 95

8 T. C. Hansard, Parliamentary Debates, Third Series, London, 1843, LXVIII, 642

ability to cope with the controversial problems.⁹

Equally important was the fact that Lord Ashburton and Mr. Webster had formed a personal friendship when Mr. Webster visited England in 1839. Lord Ashburton remarked that both Mr. Webster and Mr. Everett "by their scholarship, their eloquence, their literary ability, and their world wide reputation, commanded no little respect and admiration in England. Mr. Webster's recent visit to England had made him personally known to prominent statesmen."¹⁰ Lord Ashburton admired Mr. Webster to the extent that he confided to Mr. Everett that he would have despaired of bringing matters to a settlement advantageous to both countries but for his reliance on the upright and honorable character of the American Secretary.¹¹

By the same token Mr. Webster expressed his confidence in the appointment of Lord Ashburton in a letter to Mr. Everett as:

The high character of Lord Ashburton is well known to this government; and it is not doubted that he will enter on the duties assigned to him, not only with the advantages of much knowledge and experience in public affairs, but with a true desire to signalize his mission by assisting to place the peace of the two countries on a permanent basis. He will be received with the respect due to his own character, the character of the government which sends him, and the high importance, to both countries, of the subjects intrusted to his negotiation.¹²

9 Curtis, "Mr. Webster as a Diplomatist," 36

10 Fisher, 398

11 Ibid.

12 Diplomatic and Official Papers of Daniel Webster, 35

With such a mutual feeling of confidence between the two negotiators, the country was in a receptive mood to welcome Lord Ashburton when he arrived at Annapolis on April 5, 1842.¹³ Confidently both governments looked forward to a permanent settlement for they had been most judicious in their selection of agents to conduct the negotiation. Undoubtedly within the limits of their domains, there were not two men more competent or better disposed to settle the intricate difficulties and to preserve honor and peace, than Lord Ashburton and Mr. Webster.¹⁴

Mr. Webster's first diplomatic stroke was to invite the cooperation of Maine and Massachusetts for the disputed territory was the property of those two states, but it was under the jurisdiction of Maine. When Maine separated from Massachusetts, the latter retained part ownership of Maine's public lands, a considerable portion of which lay in the disputed territory.¹⁵ The administration took for granted that the full consent of Massachusetts and Maine was essential to the adjustment of this dispute.

On April 11, 1842 Mr. Webster addressed an official letter to the Governors of Maine and Massachusetts informing them of

13 Nevins, Hone Diary, 594

14 Niles Register, Aug. 6, 1842, 353

15 Fisher, 399

the arrival and errand of Lord Ashburton. He reviewed the history of the controversy, emphasized the necessity of a settlement, and stressed the impracticability of another attempt at arbitration which would necessitate years of survey, exploration, and examination.¹⁶ He pointed out the great expenses already incurred and these were nothing in comparison with the costs of future attempts. Mr. Webster concluded the letter with the President's proposal.

The President proposes, then that the governments of Maine and Massachusetts, should severally appoint a commission or commissioners empowered to confer with the authorities of this government upon a conventional line, or line by agreement, with its terms, conditions, considerations, and equivalents; with an understanding that no such line be agreed upon without the assent of such commissioners.¹⁷

Prudently Mr. Webster emphasized the necessity of the assent of Maine and Massachusetts on the proposal. He voiced his regrets that it would be necessary for Maine to convene the legislature again, but the seriousness of the problem warranted the request. The acquiescence on the part of these two states was a matter of great concern and anxiety to Mr. Webster. He considered their cooperation the turning point of the whole attempt. Therefore, in order to receive the consent of these states, Mr. Webster requested Jared Sparks to go to Augusta to confer with the Governor

¹⁶ Curtis, II, 98; also Van Tyne, 256

¹⁷ Diplomatic and Official Papers of Daniel Webster, 38

and the leading members of the legislature. Mr. Sparks, who was thoroughly conversant with the history of the Treaty of 1783, and who knew the strength or weakness of the American claim in all its features, executed this delicate mission with much address.¹⁸

On April 27 Massachusetts reported that the legislature had agreed to send commissioners. Abbot Lawrence, John Mills, and Charles Allen formed the Massachusetts' commission. Maine responded on May 27 with Edward Kavanagh, Edward Kent, William P. Preble, and John Otis appointed as commissioners.¹⁹ Although the commissioners were appointed, Jared Sparks' mission had been unsuccessful for Maine asserted that the line of 1783 was entirely feasible and would include within the state of Maine all the disputed territory; however she was ready to make reasonable concessions to the convenience of Great Britain but nothing to unfounded claims. Maine would consider no concession of territory, by the English, lying within the limits of the state, as an equivalent for anything yielded by her. This was not a very hopeful basis for the negotiation, inasmuch as it rendered any division of the disputed territory impracticable if Maine was not content with the equivalent offered for her surrendered claim to

¹⁸ Curtis, II, 99

¹⁹ Congressional Globe, 27th Congress, 3 Session, 12; also Curtis II, 102, Van Tyne, 258

the disputed territory. Although Massachusetts was inclined to hold fast to her claims, she did relent to the extent that she would "on honorable terms, concede something to the convenience and necessity of Great Britain, but nothing, not a rood of barren heath or rock to unfounded claims."²⁰ Mr. Webster had hoped that the commissioners would be left free to act without specific instructions. Even at that, he was so relieved that the legislatures had consented at all, that he remarked to President Tyler with evident satisfaction and animation, "The crisis is past!"

In the meantime Lord Ashburton had been royally received in Washington. His letter of June 13, 1842 to Mr. Webster confirms this fact.

...The very friendly and cordial reception given by you, sir, as well as by all the authorities of your Government to the assurance that my mission here, by my Sovereign, has been determined by an unfeigned desire to settle this and all other questions of difference between us, on principles of conciliation and justice, forbid me to anticipate the possibility of the failure of our endeavors applied with sincerity to this purpose....²¹

By June 12 the commissioners had arrived and final plans were made for the opening of the negotiation. In a letter of June 13 Lord Ashburton wrote Mr. Webster that he had concluded from his recent conferences with him that there was no advantage in reverting to the interminable discussion on the general

²⁰ Ibid.

²¹ Congressional Globe, 27th Congress, 3d Session, 4

grounds on which each party had based its claims. It was his belief that every argument, on either side, had been exhausted without any approach to an agreement. He maintained that the success of the present attempt would rest, not on the renewal of the controversy, but on a presumption that all means of a reciprocal agreement had failed as well as had the calling in the aid of a friendly arbiter as umpire.²² Therefore, the only alternative was to compromise, unless it were determined to try a second arbitration, attended by its delay, trouble, and expense, in defiance of past experience as to the probability of any more satisfactory results.²³

Mr. Webster readily accepted the suggestions of Lord Ashburton. The meetings were conducted informally and no minutes were kept. The actual negotiations began on June 18, 1842 when Lord Ashburton had a personal conference with Mr. Webster. It was generally admitted that the Treaty of 1783 could not be

22 In 1833 the King of Holland served as an arbitrator. Finding it impossible to make a judicial decision on the basis of the evidence available, he decided upon a compromise. Maine, not satisfied with the decision, protested vehemently; consequently the terms were rejected. Louis J. Jennings, ed., The Croker Papers, John Murray, Albermarle St., London, 1884, II, 393, subsequently referred to as Croker Papers.

23 Congressional Globe, 27th Congress, 3d Session, 4

executed; therefore concessions and compromises were necessary. At the request of Mr. Webster Lord Ashburton put into writing a statement of his views on a conventional line.²⁴

The boundary question was the most complicated problem and the one first attacked. Both Maine and Massachusetts vehemently opposed the conventional line. Neither state was willing to relinquish its hold on its territory. Their stubbornness brought the meeting to a stand-still and almost exhausted the patience and endurance of Lord Ashburton who complained to Mr. Webster in a letter of July 1, 1842.

My Dear Mr. Webster:

I must throw myself on your compassion to contrive somehow or other to get me released. I contrive to crawl about in these heats by day and pass my nights in sleepless fever. In short, I shall positively not outlive this affair, if it is to be much longer prolonged. I had hoped that these gentlemen from the northeast would be equally adverse to this roasting. Could not you press them to come to the point and say whether we can or cannot agree? I do not see why I should be kept waiting while Maine and Massachusetts settle their accounts with the General Government.

I am rather apprehensive that there is an inclination somewhere to keep these negotiations in suspense on grounds unconnected with the mere difficulties of the case itself.

Pray, save me from these profound politicians for my nerves will not stand so much cunning wisdom.²⁵

At this critical point of the negotiation Mr. Webster applied a psychological technique or as Bemis termed it a "prodigious bluff." To the astonishment of the staunch com-

²⁴ Curtis, II, 103

²⁵ Fisher, 400

missioners he produced a letter and a map which substantiated the British claims. This valuable information had been given to Mr. Webster by Jared Sparks who had done research work in the French Archives of Foreign Affairs. When Jared Sparks learned of the prospects of there being a negotiation on the disputed boundary line, he wrote Mr. Webster on February 15, 1842 that he had valuable information which he had hesitated to disclose. However, upon further consideration he had decided to waive his scruples and reveal the knowledge that was his. He sent Mr. Webster a transcript of a letter written to Count de Vergennes by Benjamin Franklin.

Passy 6 December, 1782

Sir: I have the honor of returning herewith the map your Excellency sent me yesterday. I have marked with a strong red line, according to your desire, the limits of the United States as settled in the preliminaries between the British and American plenipotentiaries.

With great respect, I am etc.,

B. Franklin²⁶

Jared Sparks confirmed the content of the letter by disclosing to Mr. Webster that he had found a map of North America by D'Anville dated 1746 on which a strong red line had been drawn throughout the entire boundary of the United States. This line answered precisely to Franklin's description. He made it clear to Mr. Webster that he had no positive proof that it was

²⁶ H. B. Adams, Life and Writings of Jared Sparks, Houghton Mifflin Co., N. Y., 1893, II, 395; also Crocker Papers, 394-395

Franklin's map, but all evidence seemed to indicate that it was. He sent Mr. Webster a copy of it.

The authenticity of the map did not disturb Mr. Webster. It was a necessary tool and he applied it effectively. He persuaded the commissioners that on the evidence revealed by the map they had better accept the compromise line before the British learned of the map. Without further deliberation the commissioners assented to the proposed line. Harmony restored once more to the negotiation, the negotiators formulated the terms of the treaty covering the boundary dispute. A joint commission was formed to survey, run, and mark the line of boundary. Albert Smith, Major James D. Graham, and Edward Webster were to represent the United States while Lieutenant Colonel J. B. Escourt, Captain W. H. Robinson, and James Scott were to represent Great Britain. The lines were to be accurately drawn. Parts not designated by rivers were to be marked all the way with substantial cast iron monuments with suitable inscriptions every mile and at the principal angles. Wherever the lines extended through forests, trees were cut down to a width of thirty feet. All the islands in the St. John's River were to be designated with iron monuments indicating to which government they belonged. Where streams formed portions of the boundary, monuments were erected

at the junction of every branch.²⁷

Very meticulously the boundary line was laid from the source of the St. Croix River to Isle Royale in Lake Superior.²⁸ Previous treaties had been very indefinite as to the boundary from Lake Superior to the Lake of the Woods. Lord Ashburton believed that the triangular area of 6,500 square miles bounded on the north by the Pigeon River and on the south by the line from Fond du Lac up the St. Louis River was wild country and that it was of little importance to either party how the line should run from Lake Superior to the Lake of the Woods.²⁹ Today this sounds naive enough. It was generally known that this area was considered valuable as a mineral region.³⁰ Why Lord Ashburton believed that the Mesabi Range, known to be rich in iron ore, was nothing but waste is a mystery. At any rate he chose to accept as the boundary an easily marked compromise line north of the iron region.³¹

From the northwest angle of the Lake of the Woods, which

27 The Works of Daniel Webster, Charles C. Little and James Brown & Co., Boston, 1851, VI, 358-359

28 See Appendix, Articles I & II, ii-iii

29 Corey, 168

30 The Works of Daniel Webster, VI, 280-283; also Richardson, IV, 160-169

31 Samuel M. Davis, "The Dual Origin of Minnesota," Minnesota Historical Society Collections, St. Paul, 1898-1900, IX, 539 See Appendix, Article II, iii

is found to be in latitude 45°23'55" north, existing treaties require the line to run due south to its intersection with the forty-fifth parallel and then along to the Rocky Mountains.³²

Lord Ashburton was authorized to discuss the division of the territory west of the Rocky Mountains claimed by the two countries. Since neither of the negotiators was interested in the Pacific Northwest, they did not consider it expedient to discuss the matter at this time.

The disputed territory included 12,027 square miles or 7,697,280 acres. This area was so divided that United States received approximately 7,000 square miles and Canada 5,000.³³ Canada received a military road from Quebec to the mouth of St. John's River. This road was to serve as an avenue of communications between Lower Canada and New Brunswick. In exchange for the military road we received an adjustment on the forty-fifth parallel which gave us the strategic fort at Rouse Point on Lake Champlain. It was discovered in 1818 that the northern boundary

32 The Works of Daniel Webster, VI, 350

33 Curtis, II, 97. See map on the opposite page. This is a copy of the map used during the negotiation of the treaty. "The popular feature of this map is that the boundary lines claimed by the two countries were drawn on it in colors, the American line in green, and the British line in red." Hunter Miller, "An Annotated Dashiell's Map," The American Historical Review, The Macmillan Co., N. Y., 1932, 38, 70. The maps in this chapter are taken from John B. Moore, International Arbitrations to Which the United States Has Been a Party, Government Printing Office, Washington, 1898, I, 85 & 149

of the 45th parallel between the Connecticut River and the St. Lawrence had been inaccurately surveyed in 1774; it arched slightly too far north by three-fourths of a mile where it crossed the outlet of Lake Champlain. Rouse Point, an expensive fort of the United States, commanded this outlet.³⁴ Lord Ashburton honored this fact and allowed the former line to stand, thus, not only leaving the fort in United States Territory but also giving us a narrow strip along the northern extremities of New York and Vermont. He also conceded about 200 square miles at the head of the Connecticut River.³⁵ According to the treaty both countries enjoyed the free navigation of the St. John's River.³⁶

Maine and Massachusetts were to receive \$150,000 each in compensation for surrendered lands. This amount was payable, not by Great Britain as Lord Ashburton's instructions would have permitted, but by the United States. In addition to this the United States agreed to reimburse Maine and Massachusetts for all the expenses entailed in defending their territories during the controversy. At the request of the Maine commissioners this

34 Samuel Flagg Bemis, A Diplomatic History of the United States, Henry Holt & Co., N. Y., 1936, 256

35 The Works of Daniel Webster, VI, 360. See Map G No. 3, at the end of this chapter.

36 See Appendix, Article III, iv

stipulation became a part of the treaty.³⁷ Lord Ashburton protested at this purely domestic obligation being put so anomalously into a treaty. He cleared his government of any responsibility for executing that item.³⁸

After the boundary dispute was satisfactorily settled, the case of the Caroline was revived. Lord Ashburton at great length reviewed the offense as the public act of the government rather than that of an individual. He maintained that since five years had passed since the occurrence of this case, there had been time for the public to deliberate upon it calmly. He believed that honorable men would be convinced that the British officers who executed the transaction, and their government who approved it, intended no slight or disrespect to the sovereign authority of the United States.³⁹ With great reluctance and after much pressure from Mr. Webster, Lord Ashburton weakened to the extent that on July 28 he wrote Mr. Webster, "Looking back to what passed at this distance of time, what is, perhaps, most to be regretted is that some explanation and apology for this occurrence was not immediately made."⁴⁰ Mr. Webster afterwards

37 Ibid., Article V, vi

38 See Appendix for his letter.

39 The Works of Daniel Webster, XI, 300

40 Ibid., 302

remarked that it took him two days to get Lord Ashburton to consent to use the word "apology." After some transposing of words Mr. Webster informed President Tyler that the apology for the Caroline affair had been offered. Magnanimously the President responded, "[we] will make this subject, as a complaint of violation of territory, the topic of no further discussion between the two Governments."⁴¹

In much the same tone and spirit of amendment Mr. Webster referred to the McLeod case. He expressed his regrets formally by letter on August 6. "It was a subject of regret that the release of McLeod was so long delayed."⁴² Thus most unceremoniously but satisfactorily the two cases were laid to final rest.

The next problem was that of the Creole case which added a new and dangerous complication. Its discussion practically wrecked the entire negotiation because connected with this case were the old problems of right of visit and search and impressment. The officers on board the Creole, which was an American brig sailing from Hampton Roads to New Orleans, were overpowered by the cargo of slaves. The negroes then docked at the British Bahamas. The British officials refused to turn the slaves over to the United States' authorities. This case pricked the sensitiveness of the southern states and Mr. Webster realized

41 Ibid.

42 Ibid., 303

that the handling of it would require much tact and judgment. He feared that it would compel him to take a stand on the topic of slavery. On this question he preferred a pacific though never a neutral attitude. Although he detested the practice of slavery, yet this was a problem of a different nature. In this instance it was not the question of slavery that he must protect but the right of personal property. Therefore he met the problem squarely. Mr. Webster contended that when an American vessel, driven by stress of weather, or carried by unlawful force, into a British port with slaves on board, the local authorities had no right to enter the vessel for the purpose of interfering with the condition of the persons on board, as established by the law of the vessel's own country. He maintained that the vessel brought with it under the comity of nations the law of its own country which regulated the relations of the persons on board. Further he claimed that so long as these persons were water-borne and did not violate any law of the territorial jurisdiction, they were not considered within that jurisdiction. Finally he insisted that the vessel was entitled to all the rights of hospitality, and to permission to depart unmolested.⁴³ He called upon Great Britain for restitution, but the most he could extract from Lord Ashburton was that there would be no further officious

43 Curtis, II, 122

interference with American vessels driven by accident or violence into British ports. Lord Ashburton agreed that the laws and duties of hospitality should be executed and that these neither justified nor required inquisition into the state of the persons on board unless it was necessary to enforce the observance of the municipal law and the proper regulations of the harbors and waters.⁴⁴

Another irritating problem associated with the Creole case was that of the right to visit and search of vessels. Great Britain, who was attempting to abolish the slave trade, complained that the American flag was a great obstacle. Many slavers had hoisted the American flag and had thereby avoided being examined by British officers. Great Britain wanted to extract from the United States the right to examine a suspected ship flying the American flag in the time of peace. Many other nations had given her this right by treaty.⁴⁵ This problem had become particularly acute in the African waters. Since our commercial interests in that region had increased considerably, it was the obligation of the United States to protect these

44 Ibid., 123. This case was referred in 1853 to a Joint Claims Commission, and an umpire awarded to the United States the sum of \$110,000, which Great Britain paid. Fuess, II, 113

45 Ibid., 118

interests against all vexatious interruptions. On December 7, 1841 President Tyler stated before Congress that,

American citizens prosecuting a lawful commerce in African seas, under the flag of their country, are not responsible for the abuse or unlawful use of that flag by others; nor can they rightfully, on account of any such alleged abuses, be interrupted, molested, or detained, while on the ocean; and if thus molested and detained, while pursuing honest voyages in the usual way, and violating no laws themselves, they are unquestionably entitled to indemnity.⁴⁶

Mr. Webster feared that if Great Britain were given the right to visit a suspected ship for the purpose of determining its true status, it would be very easy for the examining officer not only to search the ship but to impress American seamen. Consequently Mr. Webster reiterated the President's message and gave his ultimatum in a few direct words--"in every regularly-documented American merchant vessel, the crew who navigate it will find their protection in the flag which is over them."⁴⁷ After a prolonged discussion on the slave trade Mr. Webster and Lord Ashburton finally agreed upon a compromise. Each nation would keep a squadron with a total armament of not less than eighty guns on the African coast. Each would enforce its own laws on those merchantmen flying its flag.⁴⁸ The arrangement did not

46 House Document, No. 2., 27th Congress, 2 Session, I, 5

47 Henry Cabot Lodge, Daniel Webster, Houghton Mifflin & Co., Boston, 1883, 225

48 Curtis, II, 118; also see Appendix, Article VIII, viii

work out perfectly, but it did relieve the tension.

The recent disturbances on the border and the complications of the Creole case necessitated a discussion on the matter of extradition. After the expiration of the Jay Treaty in 1807 the extradition of fugitives could not be demanded as a right; it could only be requested as a favor.⁴⁹ Due to the misapprehension resulting from the Creole case, our government was pressed by southern representatives to make some provision which would enable the owners of slaves to require their extradition. Mr. Webster pointedly and emphatically disclaimed the idea that he demanded the return of the passengers of the Creole as slaves but rather he demanded they be returned as mutineers and murderers.⁵⁰ It was decided that the slave issue of the Creole would be dealt with by separate correspondence. Provision was made for the mutual surrender of persons charged with certain enumerated crimes. This provision became the tenth article of the treaty.⁵¹ It introduced into the relations of nations a new feature which has since been followed by many other countries.

Thus the negotiation closed. Both statesmen had conducted the negotiation with great ability. In a spirit of tact and

49 Corey, 169

50 Curtis, II, 119

51 See Appendix, Article X, ix

dexterity many clashing interests and perilous issues were finally dissolved in a permanent solution. Rightly could President Tyler proclaim, "Blessed are the peace-makers."⁵² It now remained for their respective governments to ratify the treaty which they were ready to place before them. Mr. Webster and Lord Ashburton affixed their signatures to the treaty on August 9, 1842.

⁵² Nevins, Hone Diary, 613

CHAPTER IV

THE RATIFICATION OF THE TREATY

On August 11, 1842 President Tyler presented the treaty to the Senate. He prefaced the presentation with these words: "I have the satisfaction to communicate to the Senate the results of negotiation recently had in this city with the British Minister special and extraordinary."¹ In his presidential message regarding the treaty President Tyler reviewed the history of the controversy, the achievements of the negotiation, and the benefits that would be derived were the treaty ratified by the Senate. In conclusion the president expressed his desire of ratification as:

If this treaty shall receive the approbation of the Senate, it will terminate a difference respecting a boundary which has long subsisted between the two Governments, has been the subject of several ineffectual attempts at settlement and has sometimes led to great irritation, not without danger of disturbing the existing peace.²

The treaty was then referred, on the motion of Mr. Rives, to the Committee on Foreign Relations. After a brief examination

1 The Works of Daniel Webster, VI, 347

2 Ibid.

and discussion, this committee returned it without any amendments on August 15. The debate on the treaty in secret session on August 17 was opened by Mr. Rives who spoke at considerable length on the ratification of the treaty. After stating the several objects of its stipulation, he gave a detailed account of the boundary dispute. It was his contention that the origin of the dispute was due to the ignorance of the geography of the country on the part of commissioners in previous attempts to settle the argument. Although he believed the claim of the United States to be well founded, but since that incontestable right had been ignored in the past, he did not deem it expedient to contest that right now. Therefore he urged the acceptance and ratification of the proposed treaty in its present form.³

The first opposition came from Senator Williams of Maine who confined his remarks to the boundary question. He condemned the treaty for splitting the difference and for giving Great Britain a portion of Maine's territory. This was done, he believed, in order to allow Britain the desired military road between Canada and New Brunswick. He denounced the general government for neglecting to protect and preserve the rights of Maine as a state. He ridiculed the threat that unless Maine consented to a conventional line, her rights would again be

³ Congressional Globe, 27th Congress, 3d Session,
Appendix, 59

subjected to the judgment and final disposition and arbitrament of foreigners. The idea of another arbitration, he maintained, was useless. His bone of contention was that since Great Britain was so powerful, all the European countries would be afraid of her. Therefore what could poor Maine do but submit to the conventional line which was forced upon her. He closed his remarks by offering a resolution that the treaty be recommitted.⁴

The next attack was made by Senator Benton of Missouri who plunged into a violent tirade upon every stipulation of the treaty. His principal objections were that there was but one negotiator and he was from an interested state; no protocols, notes, or minutes of the conferences were kept, and the negotiation was not conducted on a basis of absolute right. On the boundary question he made out twelve important sacrifices by the Americans to six insignificant concessions by the British.⁵ In extreme satire he wailed the losses of Maine as the following will indicate.

Long will this day--this Friday, June 17, 1842, be remembered and noted in the annals of this confederacy. In the Roman calendar, it would have had a place among their unlucky days. Its memory would have been perpetuated by a black monument and most appropriate will it be for us to mark all the new boundaries of Maine with black stones, and veil with black the statue of the god, "Terminus," degraded from

4 Ibid., 53-54

5 Curtis, II, 134

the mountain which overlooked Quebec, to the humble valley which grows potatoes.⁶

In regard to the provisions relating to the slave trade he declared that "a more ignominious purchase of exemption from outrage never disgraced the annals of an independent nation."⁷ He considered the treatment of the Creole case as a "contrivance by our Secretary to cover his desertion to the South."⁸ Mr. Webster, the sole mover and conductor of the affair, he condemned in unmeasured terms for not taking an unyielding attitude in all matters. According to Senator Benton the whole treaty was a work of solemn and mysterious humbuggery, a mere bargain and sale, an dishonorable surrender of the highest interest of the country, a shame, an injury, and a solemn bamboozlement.⁹

Senator Buchanan of Pennsylvania in a long speech denounced the treaty as a complete surrender to England. Although he had no doubts but that the treaty would be ratified, and that the ratification would send joy throughout the land, nevertheless, he chose to be one of the unpopular few in favor of rejecting it, regardless of the consequences. He maintained that when Lord Ashburton came to settle the differences between the two countries

6 Ibid.

7 Ibid.

8 Ibid.

9 Ibid.

our motto should have been "all or none."¹⁰ He claimed that in the whole negotiation invariably Mr. Webster had the better argument, but Lord Ashburton secured the substantial advantages. Vehemently he criticized Mr. Webster for not demanding reparation for injuries in the Caroline; he scorned him for his apologetical tone about the McLeod affair, but the fact that he deplored most of all was that the Creole case was not settled in the treaty. "All Christendom was leagued against the South, her only ally, was the Democracy of the North, and here her interests were neglected when an opportunity was offered to obtain justice."¹¹ As for the boundary settlements he charged that "Maine was abandoned by the whole world." He attributed this charge to "that man of gigantic intellect, who should have exerted his great powers to save Maine, had urged her dismemberment and surrendered the ancient highland boundary for which our fathers fought, and blotted it from the Treaty of Independence."¹² He held that, since no attempt had been made to settle the northwestern boundary, a most dangerous question remained unsettled. In all probability it could not be settled in the future without war.

Senator Conrad of Louisiana, less verbose than some of his colleagues, did not believe in any compromises on the

10 Ibid., 101

11 Ibid.

12 Ibid.

boundary question at all. Pointedly he remarked that the important Caroline case had been narrowed down to a matter of etiquette; the Creole case which involved "principles vital to the institutions and safety of the country and which should have been settled sine qua non" was left very much as it was found.¹³

More conservative in his remarks than the preceding speakers, Senator Calhoun stated that he would neither advocate nor decry the treaty but would simply state his reasons for voting for ratification. Although he, too, believed that the boundary claimed by Maine was the correct one, he now contended that compromise was the only solution. He doubted whether a more favorable compromise could be effected than the present one. If it were not ratified, there was no hope of better terms in the future. The only alternative would be to yield to the whole British claim or to take forcibly possession of the territory. He was opposed to either. Although he was not satisfied with the treatment of the Creole case, he did not believe it worth while to throw away what we had obtained because we did not get all we wanted. On the whole he believed that reasons for ratifying the treaty outweighed those against it. In conclusion he argued that "since peace was our policy, some sacrifice should be made to preserve it."¹⁴

13 Ibid., 86

14 Ibid., 49

Practically all the opposition to the treaty centered on the sacrifices of Maine. It was believed that in order to receive more favorable boundaries in the West something had to be paid for it. Therefore it fell to the lot of Maine to make the payment from territory to which congress had declared her title to be clear and unquestionable. The opponents took the position that there was no fact in the history of Maine in which they could take greater satisfaction than while they felt keenly the injustice done to her, once the sacrifice became inevitable, she was too proud "to higggle" about the price.¹⁵ However in capitalizing on the sacrifices of Maine, the opponents failed to recognize the advantages that were hers as a result of this treaty. The free navigation of the St. John's River was a privilege of inestimable value. It was one of the greatest rivers of the eastern section of America. This navigable river was the only outlet for the whole region. For residents of Maine to have an equal right with the British to carry lumber, grain, and cattle to the mouth of the river was deemed a great privilege. Mr. Webster believed that the right to the free navigation of the St. John's was worth the surrender of some acres of

¹⁵ Israel Washburn, "The Northeastern Boundary," Collections of the Maine Historical Society, Hoyt, Fogg & Donham, 1881, VIII, 105

barren mountains and impenetrable swamps covered with snow or fog most of the year.¹⁶ The monetary sum paid by the United States far exceeded the amount Maine would have received for the sale of the lands. Mr. Webster maintained that these criticisms were crocodile tears of pretended friendship and party sentimentality. The lamentations and griefs about the losses and sacrifices of Maine which had been uttered in the capitol would have caused nine-tenths of the people to laugh.¹⁷

The senators who opposed the treaty formed such a minority, that it was believed by some observers that in all probability their views were prejudiced or colored by party convictions.¹⁸ Nevertheless the sentiment in favor of the treaty was strong. So, in spite of Senator Benton's garrulous opposition and Senator Buchanan's vehement denunciation, the treaty was approved on August 20 by the decisive vote of 39 to 9. Thus it was accepted by a five-sixth majority. In notifying Jeremiah Mason Mr. Webster wrote, "I did not look for a majority quite so large. I am truly thankful that the thing is done."¹⁹ President Tyler congratulated Mr. Webster, who in return acknowledged generously his debt

16 Diplomatic and Official Papers of Daniel Webster, 257

17 Ibid.

18 David H. Williams, "The Treaty of Washington," North American Review, Boston, 1843, LVI, 495

19 Webster, Correspondence, II, 146

to the President for his steady support and confidence.²⁰ The administration had reason to be proud for something really constructive in diplomacy had been accomplished.

By the time the Treaty reached London, the opposition led by Palmerston opened fire on the Conservatives. They alleged that the Peel cabinet had yielded on nearly every important point. Mr. Webster was charged with duplicity for withholding his knowledge of the "red line map" from Lord Ashburton. The debate which ensued brought out the astonishing fact that the cabinet had been shown by Sir Anthony Panizzi, a so-called Mitchell map apparently used by Mr. Oswald, the British negotiator in 1782-1783 at the Versailles Conference.²¹ On this map a thick red line had been traced, giving all the disputed territory to the United States.²² Thus each party to the negotiation had secretly held a map favoring the opponent. Palmerston branded the negotiation as the "Ashburton capitulation." He accused Lord Ashburton of having fallen under the influence of his American wife. In

²⁰ Fuess, II, 115

²¹ Bemis, 263. In 1933 there was discovered in Madrid a copy of Franklin's red line map traced on a Mitchell map for the Spanish Government. It was traced by Spain's Ambassador in France in 1782, the Count de Aranda. It conforms perfectly to the American claim and to Jay's copy of Mitchell, which was turned up after the Webster-Ashburton negotiations. Had it been known in 1842, there need have been no surrender of territory. Ibid., 264

²² Crocker Papers, 395

the same spirit The Morning Chronicle remarked of the treaty as "showing what has been known to many, and thought by more that Lord Ashburton is, in his feelings and sympathies, quite as much American as English, if not more so."²³ Many Canadians believed that Lord Ashburton had been duped and in consequence their interests were sacrificed. The Americans had yielded a little of their claims and received credit from the public for acting generously while Great Britain sacrificed seven-twelfths of the territory rightfully theirs. The mere mention of the "Ashburton Capitulation" was enough to stir them to anger. Even now it would be difficult to persuade an old Provincial that the Ashburton Treaty was not one of the most unjust agreements ever entered into between the two great powers.²⁴ Typical of those who flayed the treaty were the remarks of Mr. Macaulay in parliament. He declared "the treaty to be in every way deficient. The honor of the country had been compromised 'by the humble, caressing, wheedling tone' which Lord Ashburton had adopted and which contrasted strongly with the 'firm, resolute, vigilant, and unyielding' manner of Mr. Webster."²⁵

However the attack of Palmerston and his cohorts on the treaty accomplished little. Of greater importance were the

23 quoted in New York Observer, October 8, 1842, 163

24 Croker Papers, 395

25 Curtis, II, 156

congratulations of the majority. Sir Robert Peel believed that Lord Ashburton was the persona grata. No one else could have achieved the success in the negotiation that he did. He considered the settlement of 1842 preferable to one of 1831 during Palmerston's regime. The attacks of Palmerston he treated lightly. In a letter of October 26, 1842 he remarked, "...but to me such attacks from such a quarter create only feelings of disapprobation and disgust."²⁶ "Mr. Disraeli contended that the treaty gave England more territory, a better barrier, and a more efficient boundary than the 'Dutchman's line'."²⁷ Contrary to the report of The Morning Chronicle the London Gazette stated:

The news from America of the ratification of the treaty between that Government and Lord Ashburton on the part of England has given considerable impetus to speculations in the public securities, and they advanced nearly one-quarter per cent in the general currency on Wednesday. Great satisfaction is expressed among the mercantile interest at the satisfactory conclusion of all pending differences.²⁸

Likewise the London Times rejoiced that "the real merits and importance of this treaty will ere long be acknowledged by all."²⁹ With enthusiasm this paper praised the recent achievement. "A peace era has now commenced; and it becomes the duty of every

26 C. S. Parker, ed., Sir Robert Peel, III, 387

27 Curtis, II, 157

28 quoted in National Intelligencer, October 7, 1842

29 London Times, October 10, 1842

inhabitant of this province, as a subject, a Christian, and a man to endeavor to carry out these cordial and patriotic feelings which evidently actuated the parties who were recently engaged in negotiation at Washington."³⁰

One of the greatest tributes paid Lord Ashburton was tendered by parliament. Resolutions expressing thanks for his success in negotiating a treaty honorable and advantageous to each of the high contracting parties were put on record. Seventy-nine pages of the Parliamentary Debates are devoted to expressions of appreciation.³¹ The most memorable demonstration of gratitude was displayed when the treaty was so readily ratified on October 5, 1842.

After the few weeks which it took for the word of England's ratification to reach Washington, President Tyler issued the proclamation for the acceptance of the treaty. Thus a vexatious question which had threatened peaceful relations for many years was permanently settled. All of this was accomplished in an atmosphere as little favorable to such an operation as could be imagined. It had been effected during an administration that was almost crumbling for want of harmony. Rapidly Mr. Tyler became more and more unpopular. In both the Senate and the House,

³⁰ Ibid., October 11, 1842

³¹ T. C. Hansard, LXVIII, 599-678

orthodox Whigs vilified him. Never had a Chief Executive been more completely ostracized by the party which elected him. There was a striking demonstration of his unpopularity at a testimonial dinner to Lord Ashburton. When a toast was announced to the President of the United States, not a person stood except Lord Ashburton and his suite; but, when the health of the Queen was proposed, everybody rose and gave three cheers.³²

Now that the demanding problems had been disposed of by the Washington Treaty, the Whigs became more insistent than ever that Mr. Webster should resign from President Tyler's cabinet. There was now, they said, no excuse whatsoever for his remaining. Even his closest friends were insistent that he should not continue a member of Tyler's official family. When the end of the negotiation was in view, Abbot Lawrence wrote Mr. Webster:

"Your real friends will unanimously agree with me that now is the accepted time to quit with honor, your present responsible but disagreeable position."³³ "Your best friends here," wrote Jeremiah Mason from Boston on August 23, "think there is an insuperable difficulty in your continuing any longer in President Tyler's cabinet."³⁴ The Whig press flayed Mr. Webster for his disparaging connections. It employed every possible design to

32 Nevins, Hone Diary, II, 143

33 Curtis II, 131

34 Ibid., II, 148

induce him to leave the cabinet. It clamored for his resignation on the plea that he would incur permanent political injury were he to remain any longer in the cabinet. The attempt to dictate his course of action appealed to Mr. Webster most unfavorably. The Petty persecution to which he was subjected nettled him. Normally slow to wrath, Mr. Webster, when aroused, was capable of a fierce, consuming anger. For months he had been patient under abuse, confident that his motives for remaining in the cabinet would eventually be understood. However, without consulting him the Massachusetts Whigs held a convention on September 13, 1842 which placed him in a most embarrassing position for he knew its real purpose was to create a dilemma for him. The authoritative decision of the meeting was that anyone of the party who retained a political position connected with the President was no longer deemed a Whig. A full and final separation between the President and the Whig party was definitely declared. It was clearly a plot to force Mr. Webster out of the administration. This was enough to drive him into a fighting mood.

Early in September a group of loyal adherents requested his presence at a formal dinner in recognition of his achievements of the Washington Treaty. Because of the nature of the Whig convention, Mr. Webster declined the invitation but consented to meet his friends at Faneuil Hall on September 30. Before ten o'clock in the morning all the unreserved seats were occupied, and hundreds of people had to be turned away. Report-

ers were present from New York and Philadelphia; the throng was in an expectant mood, for the wildest rumors were afloat. Mayor Jonathan Chapman, the presiding officer, made an introductory speech in which he commended Mr. Webster for his diplomatic successes.³⁵

Mr. Webster rose and surveyed what was probably the most critical audience of his life. He was ready for the ordeal and complete master of all his resources. Then in his usual Websterian manner he referred to Boston as his "cherished home." Once again as his well-remembered voice rang out through that hall, he captured and captivated his audience. With dignity, Mr. Webster, the peerless statesman, reviewed the events of the preceding months of the State Department. Fearlessly he paid tribute to the President for his confidence and support. "I take great pleasure in acknowledging here, as I will everywhere my obligations to him for the unbroken and steady confidence reposed in me through the whole progress of an affair, not unimportant to the country and infinitely important to my own reputation."³⁶ Boldly he opposed the Whig declaration of a

35 Fuess, II, 119

36 Daniel Webster, Reception of Mr. Webster at Boston with his Speech Delivered in Faneuil Hall on That Occasion, Samuel Dickinson, Boston, 1842, 12

"full and final separation from the President of the United States."³⁷ As for his own position in the future he refused to commit himself. "I give no pledges, I make no intimations, one way or the other; I will be as free, when this day closes, to act as duty calls, as I was when the dawn of this day..."³⁸ Severely he chided the Whig party and questioned their right to express their sentiments as being indicative of the whole party. He asserted his own independence when he stated:

I am a Whig, I always have been a Whig, and I always will be one and if there are any who would turn me out of the pale of that communion, let them see who will go out first. I am a Massachusetts Whig, a Faneuil Hall Whig, having breathed this air for five and twenty years, and meaning to breathe it as long as God spares my life.³⁹

Very definitely he told the Whigs he was ready to submit to all decisions on subjects on which they were authorized to make decisions, but they would never have power to bind him on matters that did not pertain to their decisions. "If I choose to remain in the President's counsel, do these gentlemen mean to say that I cease to be a Massachusetts Whig? I am quite ready to put that question to the people of Massachusetts."⁴⁰ Without retreating an inch he defended his position and informed them that he chose

37 Ibid., 16

38 Ibid., 15

39 Ibid., 16

40 Ibid., 18-19

abide consequences.

The sober men, men of business, men of independence, and of candor, all like it, this way. Mr. Clay's friends and the scheming partisans are very angry.⁴⁴

Immediately the National Intelligencer, apparently the official organ of the Whig press, publicized the protests and criticisms of the anti-Webster Whigs. Her columns declared that his speech "overboils with ill-concealed rancor towards everything that regards Mr. Clay and the Whigs themselves."⁴⁵ As for the Whig vote in the coming nomination, this paper held that Mr. Clay would carry the state by 15,000 majority. Cynically it attacked his reference to his position in the Whig party. "He taxes them in a manner, not less splenetic, with presumption, in undertaking to read Mr. Tyler out of the Whig church: presently, he suspects they may think of doing the same good office even to himself--himself a Faneuil Hall Whig!--that ever was ever will be a Whig!"⁴⁶ With delight the National Intelligencer reprinted columns of newspapers which held similar views. The New Bedford Bulletin stated that "if Mr. Webster expects to dictate to the Whig party...he will find that he overestimates the amount of his influence here."⁴⁷ "We are astonished," declared the

44 The Works of Daniel Webster, XVI, 384

45 October 4, 1842

46 Ibid.

47 Ibid., October 8, 1842

Albany Evening Journal, "that Mr. Webster should have sought the occasion to say things calculated and designed to wound and mortify the friends who cherished, sustained, and upheld him for thirty years."⁴⁸ Of the same mind was the Boston Daily American when it stated that Mr. Webster's speech disappointed his political friends. This paper condemned it for being "far too one-sided and partial toward the Tyler administration. Mr. Webster intended his remarks for an insidious attack, a sneer upon Mr. Clay, and the course of his friends in Congress."⁴⁹ Such were the rebukes of his enemies, but of greater worth were the favorable comments of the newspapers which supported him loyally.

Ardently these supporters cheered him not as a politician but as a true patriot. The Salem Gazette devoted pages to a reprint of the speech and to commendatory remarks of other newspapers. The Newburyport Herald reported that it never surrendered its columns to any document with more pleasure than it did to the speech of Mr. Webster.⁵⁰ The fact that the speech was patriotic rather than partisan appealed to the Boston Courier which praised it particularly because "the confidence of his patriotism is confirmed, and his country will be grateful for his

48 Ibid., October 4, 1842

49 Ibid.

50 Salem Gazette, October 4, 1842

firmness in remaining at the post where she needed his services."⁵¹ The New York Herald lauded the speech as a perfect masterpiece in thought, style, and expression. Heartily this paper commended Mr. Webster for rising above all factions, all parties, all corporal guards, and all mere politicians. Justice forced the New York American to proclaim that "justice to what we consider the feelings and interest of the Whig party, compels us to add that in our judgment it is a speech of a public man determined to retain office in opposition to the views of those with whom he heretofore acted, and bent upon justifying the policy and course of an administration which ostentatiously proclaims itself adverse to the party by which it was placed in power."⁵² The Boston Atlas maintained that the views expressed and the grounds assumed by Mr. Webster were in strict accordance with those entertained by the Whig party. The speech was hailed by the New York Commercial Advertiser as that of a patriot and a statesman.

Although the Faneuil Hall speech was not the greatest of Mr. Webster's achievements, it was an exhibition of sincere patriotism. It justified his friends and discomfited his enemies. Dominated by principles which forced him to fight for the right in the face of obstacles, Mr. Webster brought upon himself a mortal injury to his political life. Undoubtedly he was

51 Ibid.

52 Ibid.

alienated to a certain degree from the Whig party. In all probability his alienation cost him a future presidential nomination. Since Mr. Tyler was a president without a party, he certainly could not bequest the nomination to his Chief of Staff, and furthermore, since Mr. Webster had served notice upon the Massachusetts' Whigs that he was not to be bullied by them, he thereby merited divided support in his own state. However strong might be the Whig support in other quarters of the union, and however clear might be their convictions that Mr. Clay having been once defeated ought not to be nominated again, Mr. Clay's friends capitalized on Mr. Webster's denunciation by members of his own state.⁵³ Opposition within his own ranks spelled defeat. Consequently, among the many reasons which deprived Mr. Webster of the first office of the republic, must be reckoned, as a major cause, the proceedings of the Massachusetts' Whigs in 1842. His biographers have bewailed this loss both to himself and to his country. But when a choice between two courses in this world is made, usually the benefits of only one of them can be enjoyed. The presidency is not usually given as a reward, least of all as a reward for unusual independence of thought or action. There is no indication that Mr. Webster regretted the price that his position cost him. He retained his office through 1842 under

⁵³ Curtis, II, 145-146

severe pressure. It was not until May 8, 1843 that he believed the acceptable time had arrived, for it was not until the close of the session that congress passed laws which carried the treaty into effect. Only then did Mr. Webster consider the Washington Treaty actually completed.

To the last the pleasant relations which had subsisted between the Secretary and the President were maintained. In his letter of resignation Mr. Webster assured his chief that no one could desire more sincerely or ardently the prosperity, success, and honor of his administration; while in his very cordial reply President Tyler expressed the conviction that in the conduction of the important negotiations, Mr. Webster had manifested powers of intellect of the highest order, and in all things, a true American heart.⁵⁴ After more than twenty years of political life Mr. Webster returned to Marshfield, a private citizen.

The Webster-Ashburton negotiation comprises one of the most highly creditable chapters in the history of modern diplomacy. Not only was a threatened war averted, but a general clearing of the poisonous atmosphere which engulfed the two nations was effected. Each negotiator, aware of his serious responsibility, had no bargain to drive. He was firm when the interests committed to him required that he be so, but each was

54 Ibid., II, 211

actuated by a profound friendly spirit toward the other. Each was ready at all times to make every possible allowance for the requirements of the other's position. The discovery and the acceptance of the spirit of compromise at this time by both the United States and Great Britain has been a matter of fundamental importance for the future relations of the two countries. Had not this understanding been grounded in 1842, there could never have emerged from this period of unrest the diplomatic kinship that exists today. Yet, to restore these amicable relations, Mr. Webster not only encountered foreign opposition but domestic hostility as well. As a fitting monument to his genius, his wisdom, and his patriotism, the relations between the two greatest English-speaking countries of the world have never been severed.

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TREATY SERIES 119

BOUNDARY, SLAVE TRADE, AND EXTRADITION
(WEBSTER-ASHBURTON TREATY)

TREATY
BETWEEN THE UNITED STATES OF AMERICA
AND GREAT BRITAIN

Signed at Washington August 9, 1842.
Ratification advised by the Senate of
the United States August 20, 1842.
Ratified by the President of the
United States August 22, 1842.
Ratified by Great Britain October 5,
1842.
Ratifications exchanged at London
October 13, 1842.
Proclaimed by the President of the
United States November 10, 1842.

AND
EXCHANGES OF NOTES

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1942

For sale by the Superintendent of Documents, Washington, D.C.
Price 5 cents

By the President of the United States of America.

A PROCLAMATION.

Whereas, a treaty between the United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, was concluded and signed by their Plenipotentiaries, at Washington, on the ninth day of August, one thousand eight hundred and forty-two, which treaty is, word for word, as follows;

A TREATY TO SETTLE AND DEFINE THE BOUNDARIES BETWEEN THE TERRITORIES OF THE UNITED STATES AND THE POSSESSIONS OF HER BRITANNIC MAJESTY, IN NORTH AMERICA: FOR THE FINAL SUPPRESSION OF THE AFRICAN SLAVE TRADE: AND FOR THE GIVING UP OF CRIMINALS FUGITIVE FROM JUSTICE? IN CERTAIN CASES.

Whereas certain portions of the line of boundary between the United States of America and the British Dominions in North America, described in the second article of the Treaty of Peace of 1783,¹ have not yet been ascertained and determined, notwithstanding the repeated attempts which have been heretofore made for that purpose, and whereas it is now thought to be for the interest of both Parties, that, avoiding further discussion of their respective rights, arising in this respect under the said Treaty, they should agree on a conventional line in said portions of the said boundary, such as may be convenient to both Parties, with such equivalents and compensations, as are deemed

¹ Treaty Series 104; 8 Stat. 30; 18 Stat. (pt. 2, Public Treaties) 266.

just and reasonable:--And whereas by the Treaty concluded at Ghent, on the 24th day of December, 1814, between the United States and His Britannic Majesty,² an article was agreed to and inserted of the following tenor, vizt "Art. 10.--whereas the Traffic in Slaves is irreconcilable with the principles of humanity and justice: And whereas both His Majesty and the United States are desirous of continuing their efforts to promote its entire abolition, it is hereby agreed that both the contracting Parties shall use their best endeavors to accomplish an object": and whereas, notwithstanding the laws which have at various times been passed by the two Governments, and the efforts made to suppress it, that criminal traffic is still prosecuted and carried on: And whereas the United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, are determined that, so far as may be in their power, it shall be effectually abolished: --And whereas it is found expedient for the better administration of justice and the prevention of crime within the Territories and jurisdiction of the two Parties, respectively, that persons committing the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up: The United States of America and Her Britannic Majesty, having resolved to treat on these several subjects, have for that purpose appointed their respective Plenipotentiaries to negotiate and conclude a Treaty, that is to say: the President of the United States has, on his part, furnished with full powers, Daniel Webster, Secretary of State of the United States; and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, has, on her part, appointed the Right honorable Alexander Lord Ashburton, a peer of the said United Kingdom, a member of Her Majesty's most honorable Privy Council, and Her Majesty's Minister Plenipotentiary on a Special Mission to the United States; who, after a reciprocal communication of their respective full powers, have agreed to and signed the following articles:

2 Treaty Series 109; 8 Stat. 218; 18 Stat. (pt. 2, Public Treaties) 287.

Article I.

It is hereby agreed and declared that the line of boundary shall be as follows: Beginning at the monument at the source of the river S Croix, as designated and agreed to by the Commissioners under the fifth article of the Treaty of 1794, between the Governments of the United States and Great Britain;³ thence, north, following the exploring line run and marked by the Surveyors of the two Governments in the years 1817 and 1818, under the fifth article of the Treaty of Ghent, to its intersection with the river St. John, and to the middle of the channel thereof: thence, up the middle of the main channel of the said river St. John, to the mouth of the river St. Francis; thence up the middle of the channel of the said river St. Francis, and of the lakes through which it flows, to the outlet of the Lake Pohenagamook; thence, southwesterly, in a straight line to a point on the northwest branch of the river St. John, which point shall be ten miles distant from the main branch of the St. John, in a straight line, and in the nearest direction; but if the said point shall be found to be less than seven miles from the nearest point of the summit or crest of the highlands that divide those rivers which empty themselves into the river Saint Lawrence from those which fall into the river Saint John, then the said point shall be made to recede down the said northwest branch of the river St. John, to a point seven miles in a straight line from the said summit or crest; thence, in a straight line, in a course about south eight degrees west, to the point where the parallel of latitude of 46° 25' north, intersects the southwest branch of the St. John's; thence, southerly, by the said branch to the source thereof in the highlands at the Metjarmette Portage; thence, down along the said highlands which divide the waters which empty themselves into the river Saint Lawrence from those which fall into the Atlantic Ocean, to the head of Hall's Stream; thence, down the middle of said Stream, till the line thus run intersects the old line of boundary surveyed

³ Treaty Series 105; 8 Stat. 116; 18 Stat. (pt. 2, Public Treaties) 269. See also Treaty Series 106; 8 Stat. 130; 18 Stat. (pt. 2, Public Treaties) 282; and Treaty Series 107; 8 Stat. 131; 18 Stat. (pt. 2, Public Treaties) 283.

and marked by Valentine and Collins previously to the year 1774, as the 45th degree of north latitude, and which has been known and understood to be the line of actual division between the States of New York and Vermont on one side, and the British Province of Canada on the other; and, from said point of intersection, west along the said dividing line as heretofore known and understood, to the Iroquois or St. Lawrence river.

Article II.

It is moreover agreed, that from the place where the joint Commissioners terminated their labors under the sixth article of the Treaty of Ghent, to wit: at a point in the Neebish Channel, near Muddy Lake, the line shall run into and along the ship channel between Saint Joseph and St. Tammany Islands, to the division of the channel at or near the head of St. Joseph's Island; thence, turning eastwardly and northwardly, around the lower end of St. George's or Sugar Island, and following the middle of the channel which divides St. George's from St. Joseph's Island; thence, up the east Neebish channel, nearest to St. George's Island, through the middle of Lake George;-- thence, west of Jonas' Island, into St. Mary's river, to a point in the middle of that river, about one mile above St. George's or Sugar Island, so as to appropriate and assign the said Island to the United States; thence, adopting the line traced on the maps by the Commissioners, thro' the river St. Mary and Lake Superior, to a point north of Ile Royale in said Lake, one hundred yards to the north and east of the Ile Chapeau, which last mentioned Island lies near the northeastern point of Ile Royale, where the line marked by the Commissioners terminates; and from the last mentioned point, southwesterly, through the middle of the Sound between Ile Royale and the northwestern mainland, to the mouth of Pigeon river, and up the said river to, and through, the north and south Fowl Lakes, to the Lakes of the height of land between Lake Superior and the Lake of the Woods; thence, along the water-communication to Lake Saisaginaga, and through that Lake; thence, to and through Cypress Lake, Lac du Bois Blanc, Lac la Croix, Little Vermilion Lake, and Lake Namecan, and through the several smaller lakes, straights, or

streams, connecting the lakes here mentioned, to that point in Lac la Pluie, or Rainy Lake, at the Chaudiere Falls, from which the Commissioners traced the line to the most northwestern point of the Lake of the Woods;-- thence, along the said line to the said most northwestern point, being in latitude 49°23'55" north, and in longitude 95°14'38" west from the Observatory at Greenwich; thence, according to existing treaties,⁴ due south to its intersection with the 49th parallel of north latitude, and along that parallel to the Rocky Mountains.--It being understood that all the water-communications, and all the usual portages along the line from Lake Superior to the Lake of the Woods; and also Grand Portage, from the shore of Lake Superior to the Pigeon river, as now actually used, shall be free and open to the use of the citizens and subjects of both countries.

Article III.

In order to promote the interests and encourage the industry of all the inhabitants of the countries watered by the river St. John and its tributaries, whether living within the State of Maine or the Province of New Brunswick, it is agreed that, where, by the provisions of the present treaty the river St. John is declared to be the line of boundary, the navigation of the said river shall be free and open to both Parties, and shall in no way be obstructed by either; That all the produce of the forest, in logs, lumber, timber, boards, staves, or shingles, or of agriculture not being manufactured, grown on any of those parts of the State of Maine watered by the river St. John, or by its tributaries, of which fact reasonable evidence shall, if required, be produced, shall have free access into and through the said river and its said tributaries, having their source within the State of Maine, to and from the seaport at the mouth of the said river St. John's, and to and round the Falls of the said river, either by boats,

⁴ See Treaty Series 112; 8 Stat. 248; 18 Stat. (pt. 2 Public Treaties) 297; and Treaty Series 116; 8 Stat. 360; 18 Stat. (pt. 2, Public Treaties) 310.

rafts, or other conveyance: That when within the Province of New Brunswick, the said produce shall be dealt with as if it were the produce of the said province: That, in like manner, the inhabitants of the Territory of the Upper St. John determined by this Treaty to belong to her Britannic Majesty, shall have free access to and through the river for their produce, in those parts where the said river runs wholly through the State of Maine: provided always, that this agreement shall give no right to either party to interfere with any regulations not inconsistent with the terms of this treaty which the Governments, respectively, of Maine or of New Brunswick, may make respecting the navigation of the said river, where both banks thereof shall belong to the same Party.

Article IV.

All grants of land heretofore made by either Party, within the limits of the territory which by this Treaty falls within the dominions of the other Party, shall be held valid, ratified, and confirmed to the persons in possession under such grants, to the same extent as if such territory had by this Treaty fallen within the dominions of the Party by whom such grants were made: And all equitable possessory claims, arising from a possession and improvement of any lot or parcel of land by the person actually in possession, or by those under whom such person claims, for more than six years before the date of this Treaty, shall, in like manner, be deemed valid, and be confirmed and quieted by a release to the person entitled thereto, of the title to such lot or parcel of land, so described as best to include the improvements made thereon; and in all other respects the two contracting Parties agree to deal upon the most liberal principles of equity with the settlers actually dwelling upon the Territory falling to them, respectively, which has heretofore been in dispute between them.

Article V.

Whereas, in the course of the controversy respecting the disputed Territory on the northeastern boundary, some moneys have been received by the authorities of Her Britannic Majesty's Province of New Brunswick, with the intention of preventing depredations on the forests of the said Territory, which moneys were to be carried to a fund called the "Disputed Territory Fund", the proceeds whereof, it was agreed, should be hereafter paid over to the Parties interested, in the proportions to be determined by a final settlement of boundaries: It is hereby agreed, that a correct account of all receipts and payments on the said fund, shall be delivered to the Government of the United States, within six months after the ratification of this Treaty; and the proportion of the amount due thereon to the States of Maine and Massachusetts, and any bonds or securities appertaining thereto, shall be paid and delivered over to the Government of the United States; and the Government of the United States agrees to receive for the use of, and pay over to the States of Maine and Massachusetts, their respective portions of said Fund: And further to pay and satisfy said States, respectively, for all claims for expenses incurred by them in protecting the said heretofore disputed Territory, and making a survey thereof, in 1838; the Government of the United States agreeing with the States of Maine and Massachusetts to pay them the further sum of three hundred thousand dollars, in equal moieties, on account of their assent to the line of boundary described in this Treaty, and in consideration of the conditions and equivalents received therefor, from the Government of Her Britannic Majesty.

Article VI.

It is furthermore understood and agreed, that for the purpose of running and tracing those parts of the line between the source of the St. Croix and the St. Lawrence river, which will require to be run and ascertained, and for marking the residue of said line by proper monuments on the land, two Commissioners shall be appointed, one by

the President of the United States, by and with the advice and consent of the Senate thereof, and one by Her Britannic Majesty: and the said commissioners shall meet at Bangor, in the State of Maine, on the first day of May next, or as soon thereafter as may be, and shall proceed to mark the line above described, from the source of the St. Croix to the river St. John; and shall trace on proper maps the dividing line along said river, and along the river St. Francis, to the outlet of the Lake Pohenagamook; and from the outlet of the said Lake, they shall ascertain, fix, and mark by proper and durable monuments on the land, the line described in the first article of this Treaty; and the said Commissioners shall make to each of their respective Governments a joint report or declaration, under their hands and seals, designating such line of boundary, and shall accompany such report or declaration with maps certified by them to be true maps of the new boundary.

Article VII

It is further agreed, that the channels in the river St. Lawrence, on both sides of the Long Sault Islands and of Barnhart Island; the channels in the river Detroit, on both sides of the Island Bois Blanc, and between that Island and both the American and Canadian shores; and all the several channels and passages between the various Islands lying near the junction of the river St. Clair with the lake of that name, shall be equally free and open to the ships, vessels, and boats of both Parties.

Article VIII.⁵

The Parties mutually stipulate that each shall prepare, equip, and maintain in service, on the coast of Africa, a sufficient and adequate squadron, or naval force of vessels, of suitable numbers and descriptions, to carry in all not less than eighty guns, to enforce, separately and respectively, the laws rights and obligations of each of the two countries, for the suppression of the Slave Trade, the said squadrons to be independent of each other, but the two Governments stipulating, nevertheless, to give such orders to the officers commanding their respective forces, as shall enable them most effectually to act in concert and cooperation, upon mutual consultation, as exigencies may arise, for the attainment of the true object of this article; copies of all such orders to be communicated by each Government to the other respectively.

Article IX.⁶

Whereas, notwithstanding all efforts which may be made on the coast of Africa for Suppressing the Slave Trade, the facilities for carrying on that traffic and avoiding the vigilance of cruisers by the fraudulent use of flags, and other means, are so great, and the temptations for pursuing it, while a market can be found for Slaves, so strong, as that the desired result may be long delayed, unless all markets be shut against the purchase of African negroes, the Parties to this Treaty agree that they will unite in

5 Arts. VIII and IX have been made obsolete by changed circumstances. See correspondence dated Apr. 27 and June 5, 1922, between the British Ambassador at Washington and the Secretary of State, regarding the formal denunciation by the British Government of the treaty and convention (treaty of Apr. 7, 1862, additional article thereto of Feb. 17, 1863, and convention of June 3, 1870) between the United States and Great Britain for the abolition of the slave trade and the general policy of the British Government to abolish obsolete instruments. FOREIGN RELATIONS, 1922, vol. II, pp. 407-408.

all becoming representations and remonstrances, with any and all Powers within whose dominions such markets are allowed to exist; and that they will urge upon all such Powers the propriety and duty of closing such markets effectually at once and forever.

Article X.⁷

It is agreed that the United States and Her Britannic Majesty shall, upon mutual requisitions by them, or their Ministers, Officers, or authorities, respectively made, deliver up to justice, all persons who, being charged with the crime of murder, or assault with intent to commit murder, or Piracy, or arson, or robbery, or Forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall seek an asylum, or shall be found, within the territories of the other: Provided, that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged, shall be found, would justify his apprehension and commitment for trial, if the crime or offence had there been committed: And the respective Judges and other Magistrates of the two Governments, shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such Judges or other Magistrates, respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge it shall be the duty of the examining Judge or Magistrate, to certify the same to

7. Art. X was terminated, so far as relations between the United States of America and Great Britain and certain British dominions, territories, and possessions are concerned, by the extradition treaty between the United States of America and Great Britain signed Dec. 22, 1931 (Treaty Series 849; 47 Stat. 2122, 2127). Art. X will be superseded in respect of relations between the United States and Canada upon the taking effect of and extradition treaty between the United States and Canada signed on Apr. 29, 1942.

the proper Executive Authority, that a warrant may issue for the surrender of such fugitive.--The expense of such apprehension and delivery shall be borne and defrayed by the Party who makes the requisition, and receives the fugitive.

Article XI.

The eighth article of this Treaty shall be in force for five years from the date of the exchange of the ratifications, and afterwards until one or the other Party shall signify a wish to terminate it. The tenth article shall continue in force until one or the other of the Parties shall signify its wish to terminate it, and no longer.

Article XII.

The present Treaty shall be duly ratified, and the mutual exchange of ratifications shall take place in London, within six months from the date hereof, or earlier if possible.

In Faith whereof, we, the respective Plenipotentiaries, have signed this Treaty, and have hereunto affixed our Seals.

Done, in duplicate, at Washington, the ninth day of August, Anno Domini one thousand eight hundred and forty-two.

Dan Webster

Ashburton

(Seal)

(Seal)

And whereas, the said treaty has been duly ratified on both parts, and the respective ratifications of the same having been exchanged, to wit; at London, on the thirteenth day of October, one thousand eight hundred and forty-two, by Edward Everett, Envoy Extraordinary and Minister Plenipotentiary of the United States, and the Right Honorable the Earl of Aberdeen, Her Britannic Majesty's principal Secretary of State for Foreign Affairs, on the part of their respective governments:

Now, therefore, be it known, that I, John Tyler, President of the United States of America, have caused the said treaty to be made public, to the end that the same and every clause and article thereof, may be observed and fulfilled with good faith, by the United States and the Citizens thereof.

In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

(Seal) Done at the City of Washington, this tenth day of November, in the year of our Lord one thousand eight hundred and forty-two, and of the Independence of the United States, the sixty-seventh.

JOHN TYLER

By the President:

DAN WEBSTER

Secretary of State.

EXCHANGES OF NOTES

THE BRITISH MINISTER PLENIPOTENTIARY ON SPECIAL MISSION TO THE
SECRETARY OF STATE

Washington 9th August 1842

Sir,

It appears desirable that some explanation between us should be recorded by correspondence respecting the fifth Article of the Treaty signed by us this day for the settlement of Boundaries between Great Britain and the United States.

By that Article of the Treaty it is stipulated, that certain payments shall be made by the Government of the United States to the States of Maine and Massachusetts. It has of course been understood that my negotiations have been with the Government of the United States, and the introduction of terms of agreement between the General Government and the States would have been irregular and inadmissible, if it had not been deemed expedient to bring the whole of these transactions within the purview of the Treaty. There may not be wanting analogous cases to justify this proceeding, but it seems proper that I should have confirmed by you, that my Government incurs no responsibility for these engagements, of the precise nature and object of which I am uninformed, nor have I considered it necessary to make enquiry concerning them.

I beg, Sir, to renew to you the assurance of my high consideration.

Ashburton

The Hon^{ble}
Daniel Webster

THE SECRETARY OF STATE TO THE BRITISH MINISTER PLENIPOTENTIARY
ON SPECIAL MISSION

Department of State,
WASHINGTON, AUGT.9, 1842.

Lord Ashburton,

My Lord:

I have the honor to acknowledge the receipt of your note of the 9th of August, with respect to the object and intention of the 5th article of the treaty. What you say in regard to that subject is quite correct. It purports to contain no stipulation on the part of Great Britain, nor is any responsibility supposed to be incurred by it, on the part of your Government.

I renew, my Lord, the assurance of my distinguished consideration.

Dan^l Webster.

THE BRITISH MINISTER PLENIPOTENTIARY ON SPECIAL MISSION TO THE
SECRETARY OF STATE

Washington 9th August 1842

Sir,

By the 3rd article of the Convention¹ which I have this day signed with you there is an agreement for the recipro-

1 i.e. art. X of the Webster-Ashburton Treaty.

"As first drawn up and signed on August 9, 1842, the agreement between the two Governments was embodied in two instruments, a treaty and a convention. On the following day, August 10, but under date of August 9, the clauses of those two instruments were combined into one, the treaty here printed as the Webster-Ashburton Treaty.

"In the earlier form the separate treaty ('to settle and define the Boundaries between the possessions of Her Britannic Majesty in North America and the territories of the United States') comprised eight articles, which corresponded to Articles 1-7 and 12 of the Webster-Ashburton Treaty;...

(continued on next page)

cal delivery in certain cases of criminals fugitive from justice, but it becomes necessary that I should apprise you that this article can have no legal effect within the Dominions of Great Britain until confirmed by Act of Parliament. It is possible that Parliament may not be in Session before the Exchange of the ratifications of the Convention, but its sanction shall be asked at the earliest possible period and no doubt can be entertained that it will be given. In Her Majesty's territories in Canada, where cases for acting under this convention are likely to be of more frequent occurrence, the Governor General has sufficient power under the authority of local legislation, and the Convention will there be acted upon, so soon as its ratification shall be known, but it becomes my duty to inform you of the short delay which may possibly intervene in giving full effect to it where the confirmation by Parliament becomes necessary for its execution.

I beg, Sir, to renew to you the assurance of my high consideration.

Ashburton

The Hon^{ble}
Daniel Webster

(continued from last page)

"In the earlier from the convention (of five articles, 'for the final suppression of the African Slave Trade, and for the giving up of criminals, fugitive from justice, in certain cases') contained as its Articles 1-3, Articles 8-10 of this treaty...."

Miller, TREATIES AND OTHER INTERNATIONAL ACTS OF THE UNITED STATES OF AMERICA, vol. 4, p. 375.

APPROVAL SHEET

The thesis submitted by Sister Mary Philomene O'Connor, O.S.B., has been read and approved by three members of the Department of History.

The final copies have been examined by the director of the thesis and the signature which appears below verifies the fact that any necessary changes have been incorporated, and that the thesis is now given final approval with reference to content, form, and mechanical accuracy.

The thesis is therefore accepted in partial fulfillment of the requirements for the Degree of Master of Arts.

Dec. 10, 1948
Date

Paul Kinney
Signature of Adviser